IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 670

ERNEST PERKINS, ET AL., APPELLANT,

v.

L. S. MATTHEWS, MAYOR OF THE CITY OF CANTON, ET AL., APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

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Docket Entries

Date

5-1-69—Complaint, Original and 19 copies filed.

5-1-69—Notice of Motion with Motion for Temporary Restraining Order attached, original and 19 copies filed. Notice of Motion for 5-9-69, Jackson, Miss.

5-1-69—Notice of Motion with Motion for Preliminary Injunction attached, original and 19 copies filed. Notice of motion for 5-9-69, Jackson, Miss.

5-2-69—Summons, original and 15 copies, copies having attached thereto copy of complaint, Notice of Motion with Motion for Temporary Restraining Order attached, and Notice of Motion with Motion for Preliminary Injunction attached, issued and handed U.S. marshal.

5-6-69—Marshal's return on Summons executed as to Glynn Cook, R. H. Shackleford, Jr., Amos Dowdle, Jr., Joe Iupe, Earl B. Goolsby, Jr., William B. Crawford, L. H. Johnson, Hermit Jones, by delivering to Mr. R. L. Goza, City Attorney of City of Canton, copy of summons and complaint, and on C.F. Riddell, R.H. Holmes, Gus Noble, Mack Ragsdale, Rob Dow, by delivering to R.H. Holmes, Chairman of Democratic Municipal Executive Committee of City of Canton, and on Dr. G.A. Carmichael by personally delivering to him, filed.

5-6-69—Marshal's return on summons executed as to L.S. Matthews, filed.

Date

5-8-69—Notice of hearing Motion for Temporary Restraining Order for 5-9-69, Biloxi, Miss., with certificate of service, filed.

5-8-69—James A. Lewis' return on subpoena to produce document or object executed as to W. A. Sims, Chancery Clerk, Madison County, filed.

5-8-69—James A. Lewis' return on subpoena to produce document or object executed as to Mrs. Georgia L. Cobb, City Clerk of Canton, Miss., filed.

5-12-69—Opinion of the Court, filed. (Copy mailed Robert L. Goza and James A. Lewis 5-13-69)

5-12-69—TEMPORARY RESTRAINING ORDER: Municipal elections for City of Canton for 5-13 and 5-20, 1969 and municipal general elections for 6-3-69 restrained until further order; Plaintiffs to deposit with Clerk bond in amount of $2,500.00. Filed and entered OB 1969, P. 511-512. (copy mailed James A. Lewis 5-13-69) Bond deposited 5-12-69.

5-12-69—Copy of TRO mailed R.L. Goza from Biloxi certified mail return receipt requested.

5-9-69—EXHIBITS: A & B Joint Exhibits; P-1 thru P-8; filed.

5-19-69—Designation of Hon. James P. Coleman, U.S. Circuit Judge, Hon. William Harold Cox and Hon. Walter L. Nixon, Jr., U.S. District Judges for the Southern District of Mississippi, signed by Judge John R. Brown, Chief Judge of the Fifth Circuit, to hear and determine the action, filed and entered OB 1969, Pages 529-530.

Date

5-19-69—Copy of Complaint, temporary restraining order and designation mailed Judge Cox, Judge Nixon and Judge Coleman.

5-26-69—Answer of Defendants filed.

5-30-69—Motion of plaintiffs for leave to file Amendment to Complaint and Notice of motion for hearing at Jackson at 9:00 A.M. on 5-30-69, with certificate of service, filed.

5-30-69—ORDER: that amendment attached hereto be incorporated in the Complaint and that a copy thereof be served upon Robert L. Goza as sufficient service and notice to all defendants, filed and entered OB 1969, Page 553. (Copy handed attorneys of record by Sue Richmond).

5-30-69—Amendment to Complaint, filed. (Copy handed attorney Robert L. Goza by Sue Richmond).

6-2-69—EXHIBITS: P-1 through P-7; D-1, filed.

7-17-69—OPINION: Judgment may be entered by any Judge of the Court, for the Court, dissolving the temporary injunction and dismissing the complaint, filed. (Copy mailed attorneys Lewis and Goza; copy mailed Judges Nixon and Coleman. Anne Crews stated she retained conformed copy for Judge Cox)

7-24-69—JUDGMENT of 3-Judge Court: Complaint dismissed with prejudice at cost of Plaintiffs; cash bond of $2,500 paid into registry by Plaintiffs condemned for payment of damages sustained by defendants, amount to be determined after hear-

Date

ing before Judge Harold Cox; Temporary restraining order dissolved and defendants given full power and authority to conduct municipals elections in accordance with this opinion. Filed and entered OB 1969, Pages 791-792. (copies mailed attorneys of record. A. Crews stated copies had been mailed Judges)

7-24-69—Final J.S. 6 Card.

7-30-69—Plaintiffs' notice of appeal to Supreme Court of United States from judgment of U.S. District Court entered 7-18-69 dismissing complaint, with certificate of service, filed.

7-31-69—Order retaining original papers and allowing appellant 10 days in which to file designation of those parts of record in addition to copy of docket entries to be forwarded by the Clerk of this court—filed and entered OB 1969 P 824. Copy of above order mailed to Attys. of record.

8-12-69—Appellant's designation of record with certificate of service, filed.

9-8-69—Court Reporter's Transcript, filed.

9-9-69—Motion of Plaintiffs to stay judgment pending appeal, filed.

9-9-69—Motion of Plaintiffs to transmit original exhibits to Court of Appeals or in the alternative for an order authorizing Clerk to release said exhibits to appellants for purpose of reproducing them for inclusion in record.

Date

9-9-69—Plaintiff's notice of two above motions for 9-12-69 at Biloxi, Miss., filed.

9-12-69—Court Reporter's Transcript of proceedings had on 6-2-69, filed.

9-23-69—ORDER: Motion for a partial stay and to restrain the holding of the elections is denied without prejudice to the plaintiffs-appellants' right, in the event the judgment of this court is reversed to apply to this court for an order setting the elections aside. Filed and entered OB 1969, P. 982. Copy mailed James A. Lewis and R.L. Goza.

9-23-69—ORDER: Clerk authorized to transmit maps and photographs introduced as exhibits to Clerk of Supreme Court of U.S. in original form and original record shall be returned to the Clerk of this court upon completion of appeal. Filed and entered OB 1969, P. 981. Copy mailed James A. Lewis and R. L. Goza.

A True Copy, I Hereby Certify.

ROBERT C. THOMAS,
Clerk

By: J. NALL
Deputy Clerk

Filed May 1, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 4464

ERNEST PERKINS, JOHN NICHOLS, ROBERT CHINN, CHARLES HARRIS, JR., FLONZIE GOODLOE, and VERA COLLINS, on their behalf and on behalf of all others similarly situated, *Plaintiffs*

v.

L. S. MATTHEWS, Mayor of the City of Canton; GLYNN COOK, AMOS DOWDLE, JR., EARL B. GOOLSBY, SR., L. H. JOHNSON and HERMIT JONES, Aldermen of the City of Canton; C. F. RIDDELL, R. H. HOLMES, DR. G. A. CARMICHAEL, GUS NOBLE, MACK RAGSDALE and ROB DOW, Democratic municipal executive committee of the City of Canton; and R. H. SHACKLEFORD, JR., JOE IUPE, and WILLIAM B. CRAWFORD, municipal election commission of the City of Canton, *Defendants*

Complaint

1. This is a civil action, pursuant to 42 U.S.C. §§ 1973c and 1983, for declaratory and injunctive relief against defendants' 1966 and 1968 extensions of the municipal boundaries of the City of Canton, Mississippi, to include a substantial number of additional white voters, and against defendants' selection of polling places for the May and June 1969 municipal primary and general elections, on grounds that the boundary extension and the selection of polling places each is a change in practice and procedure with respect to voting in a political subdivision covered by 42 U.S.C. § 1973b(a) and may not be enforced without compliance with 42 U.S.C. § 1973c, and on grounds that the boundary extension and the selection of polling places deny or abridge plaintiffs' right to vote and have their votes

counted, in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

2. Jurisdiction of this Court is based on 28 U.S.C. §§ 1343 (3)(4), 1973c and 2201. A court of three judges is required by 42 U.S.C. § 1973c.

FIRST COUNT

3. Plaintiff Ernest Perkins is a qualified elector and candidate for Alderman in the Democratic municipal primary election in Canton to be held May 13, 1969. Plaintiff John Nichols is a qualified elector and independent candidate for Mayor in the municipal general election in Canton to be held June 3, 1969. Plaintiffs Robert Chinn and Charles Harris, Jr., are qualified electors and independent candidates for Alderman in the municipal general election in Canton to be held June 3, 1969. Plaintiff Flonzie Goodloe is a qualified elector in Canton. Plaintiff Vera Collins is a qualified elector in Madison County. She lives outside Canton, next to the area containing white voters who were included by the 1966 and 1968 extension of municipal boundaries. All plaintiffs are black citizens of the United States.

4. Plaintiffs sue on behalf of themselves and all others similarly situated. The class is so numerous that joinder of all members is impracticable; questions of law and fact are common to the class; plaintiffs' claims and defenses are typical of the class; plaintiffs fairly and adequately protect the interests of the class; defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. Defendant L. S. Mathews is the Mayor and Defendants Glynn Cook, Amos Dowdle, Jr., Earl B. Goolsby, Sr., L. H. Johnson and Hermit A. Jones are the Aldermen of the City of Canton, Mississippi.

6. Defendants C. F. Riddell, R. H. Holmes, Dr. G. A. Carmichael, Gus Noble, Mack Ragsdale and Rob Dow are the Democratic municipal executive committee of Canton, Mississippi.

7. Defendants R. H. Shackleford, Jr., Joe Iupe, and William B. Crawford are the municipal election commission of Canton, Mississippi.

8. The defendants in paragraph 5 above passed the 1966 and 1968 ordinances extending the municipal boundaries to draw a substantial number of additional white voters into Canton.

9. This boundary extension was put into effect in accordance with the provisions of the Mississippi Code and is presently in effect for the May and June 1969 municipal primary and general elections.

10. The defendants in paragraph 6 are responsible for the conduct of the May 1969 municipal Democratic primary election. They will use the 1966 and 1968 municipal boundary extension in determining who may vote in that election.

11. The defendants in paragraph 7 are responsible for the conduct of the June 1969 municipal general election. They will use the 1966 and 1968 municipal boundary extension in determining who may vote in that election.

12. Prior to the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq., less than 200 black citizens of the City of Canton, Mississippi, were qualified electors. Since the municipal elections of 1965, a great number of black citizens of the City of Canton have become qualified electors. Now more than 2000 black citizens are qualified electors of Canton. The May and June 1969 municipal primary and general elections are the first opportunities in this century for the vast majority of black citizens of Canton to participate in selecting governing officials of their city.

13. The 1966 and 1968 boundary extension substantially altered the racial composition of the municipal populace

and electorate. A large number of white voters were included in the city. Upon information and belief, no black voters were included. The boundary lines were drawn in such a manner as to pull in white voters, keep out black voters, and dilute the effectiveness of the vote of the newly-enfranchised black citizens.

14. The boundary extension has the purpose and effect of racial discrimination, denying plaintiffs equal protection of the laws and due process of law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

15. The boundary extension has the purpose and effect of denying, abridging and diluting the right to vote of plaintiffs and their class on grounds of race, in violation of the Fifteenth Amendment to the Constitution of the United States.

16. The City of Canton, Mississippi, is a political subdivision with respect to which the prohibitions of 42 U.S.C. § 1973b(a) are in effect.

17. The 1966 and 1968 boundary extension is a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964." 42 U.S.C. § 1973c.

18. Defendants have not complied with 42 U.S.C. § 1973c, in that they have not obtained a declaratory judgment in the United States District Court for the District of Columbia that the qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, nor have defendants submitted said qualification, prerequisite, standard, practice or procedure to the Attorney General of the United States.

19. Thus defendants may not put the 1966 and 1968 boundary changes into effect for purposes of the May and June 1969 municipal primary and general elections.

SECOND COUNT

20. Plaintiffs repeat and reallege the allegations of paragraphs 3, 4, 5, 6, 7 and 12 above.

21. Defendants Mayor and Aldermen with defendants Democratic municipal executive committee plan to hold the May 1969 municipal primary in the following polling places:

Ward 1	Sacred Heart Parish
Ward 2	City Hall
Ward 3	Madison County Jail
Ward 4	King Lumber Company

22. Defendants Mayor and Alderman with defendants municipal election commission plan to hold the June 1969 municipal general election in the polling places as set out in paragraph 21, above.

23. Except for the use of City Hall for Ward 2 in the 1968 municipal bond election, none of these places has been used in any recent municipal election. Prior municipal elections have been held at the following polling places:

WARD 1

1953	Old City Hall
1957	Old City Hall
1961	Old City Hall
1965	Employment Office
1968	Employment Office
1969 (planned)	Sacred Heart Parish

WARD 2

1953	First National Bank
1957	First National Bank
1961	First National Bank
1965	First National Bank
1968	City Hall
1969 (planned)	City Hall

WARD 3

1953	Canton Exchange Bank
1957	Canton Exchange Bank
1961	Canton Exchange Bank
1965	Canton Exchange Bank
1968	Shackleford Building
1969 (planned)	Madison County Jail

WARD 4

1953	Court House
1957	Court House
1961	Court House
1965	Court House
1968	Court House
1969 (planned)	King Lumber Company

24. The polling places for the May and June 1969 municipal primary and general elections are inadequate and inaccessible and have the purpose and effect of reducing voting by black citizens.

25. Defendants' selection of polling places has the purpose and effect of racial discrimination, in violation of the guarantees in the Fourteenth Amendment to the Constitution of the United States of due process of law and equal protection of the laws.

26. Defendants' selection of polling places has the purpose and effect of denying, abridging, reducing and diluting the right to vote of black citizens on account of race, in violation of the Fifteenth Amendment to the Constitution of the United States.

27. Plaintiffs repeat and reallege the allegations of paragraphs 21, 22 and 23 herein.

28. Defendants' selection of polling places may not be put into effect for the May and June 1969 municipal primary and general elections.

29. Plaintiffs will suffer irreparable injury, without adequate remedy at law, if the May and June 1969 municipal Democratic primary and general elections are held with the electorate substantially altered by the 1966 and 1968 inclusion of white voters and with the polling places as now planned. An injunction is the only appropriate remedy to restrain the illegal holding of this election.

WHEREFORE, plaintiffs pray:

1. That a Court of three judges be convened;

2. That upon hearing the Court grant declaratory relief and a preliminary and permanent injunction restraining defendants from enforcing the 1966 and 1968 boundary extension and the proposed polling places for the May and June 1969 municipal primary and general elections, on grounds of violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States and of 42 U.S.C. § 1973c;

3. That pending the hearing of this matter the District Court prevent irreparable damage by restraining the May 1969 municipal primary elections if they are to be conducted at the proposed polling places with voters from the area added by defendants' 1966 and 1968 boundary extension;

4. That this Court grant costs and reasonable attorneys' fees to plaintiffs; and

5. That this Court grant such further relief as may be necessary to protect plaintiffs' rights.

Respectfully submitted,

ARMAND DERFNER
JAMES A. LEWIS
603 North Farish Street
Jackson, Mississippi
Attorneys for Plaintiffs

April 30, 1969

STATE OF MISSISSIPPI
COUNTY OF HINDS

VERIFICATION

I am one of the plaintiffs herein;

I have read the attached complaint, and it is true; as to the matters alleged upon information and belief, I believe they are true.

ROBERT CHINN

Sworn to and subscribed before me, this 30th day of April, 1969.

SARAH BROWN SMITH

My Commission Expires Aug. 31, 1970.

Filed May 12, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 4464

Oral Opinion of the Court

This is an action brought by Plaintiffs who are all Negroes and candidates for City offices in the City of Canton, Mississippi, against the Mayor and Board of Aldermen of the City of Canton, the Democratic Municipal Executive Committee of the City of Canton and the Municipal Election Commission of the City of Canton, Mississippi, based on 42 U.S.C. Section 1973 (C) and 1983 for declaratory and injunctive relief against the Defendants' 1966 and 1968 extensions of the Municipal Boundaries of the City of Canton, Mississippi, to include a substantial number of additional, as alleged, white voters and against Defendants' selection of polling places for the May and June 1969 Municipal Primary and General Elections, on the grounds that the

boundary extension and the selection of polling places each is a change in practice and procedure with respect to voting in a political subdivision covered by 42 U.S.C. Section 1963 B (a) and may not be enforced with 42 U.S.C. 1973 C and on grounds that the boundary extension and the selection of polling places deny or abridge Plaintiffs' right to vote and have their vote counted in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Jurisdiction of this Court is based on 28 U.S.C. Sections 1343 (3, 4), Section 1973 C and Section 2201. Three Judge Court has been requested as required by 42 U.S.C. 1973 C and this request has been sent by this Court to the Chief Judge of the Court of Appeals for the Fifth Circuit asking that a three judge court be designated to hear this matter, that is, the declaratory judgment and injunctive features thereof. This Court today is hearing this motion for temporary restraining order which was filed and noticed by the Plaintiffs or Petitioners herein, and the only question before this court at this time is whether or not irreparable injury would be caused Plaintiffs if the temporary restraining order were not issued pending the hearing of this matter before a Three Judge Court as required by law and as set forth in the recent case of Allen v. State Board of Elections, Et Al, which was decided by the unanimous United States Supreme Court through Chief Justice Earl Warren on March 3, 1969, which was a case that emanated from the State of Mississippi and which involved, among other things, the county-wide voting for all members of boards of supervisors in various counties as authorized by the Mississippi Legislature and which changed the office of the election commissioners for each county from an appointive to an elective office, and also dealt with absentee voting.

The Court, having heard testimony and arguments of counsel and having considered the pleadings and exhibits and all other evidence in this case finds that it has jurisdiction of this matter for determining the question of

temporary restraining order and finds that the City of Canton in 1966 and in 1968 extended its municipal boundaries to include additional areas with additional voters residing therein, and finds that there is no proof that these extensions were enacted or put into effect by the City of Canton for the purpose of denying anyone any voting right or to deny anyone any right guaranteed by the Fourteenth and Fifteenth Amendment of the United States Constitution, however the case of Allen versus State Board of Elections held that it is not the function or prerogative of this Court, even if it were now sitting as a three judge court, to determine the motive of the City in extending its boundary. The only questions to be decided by this three judge court in the final analysis, the three judge court to be designated, is whether or not the State of Mississippi or any of its political subdivisions have acted in such a way as to cause or constitute a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 of the Voting Rights Act of 1965, which changed the situation that existed as of November 1, 1964, and whether or not prior to doing so the City had filed a request for declaratory judgment with the United States District Court for the District of Columbia or asked for approval of the Attorney General of the United States as required by Section 1973. It is stipulated that the City did not take either one of this actions, therefore the only questions before this court at this particular time are whether or not the extension of the boundary of the City of Canton, Mississippi constituted an act or enactment which changed or affected the voting qualifications or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 of the Voting Rights Alt of 1965. And if the Court finds this to be the case, that is, the three judge court to be designated, then in that event it will have no alternative but to grant the relief requested, in part at least.

The Court finds that the extension of the boundaries of the City of Canton, a political subdivision of the State of Mississippi, was such an action to be comparable to the authorization by legislative enactment of the State of Mississippi, of county wide voting on boards of supervisors within certain counties which has been held by the United States Supreme Court to constitute the prohibited action of Section 5 of the Voting Rights Act of 1965.

Therefore the Court finds and is of the opinion that extension of the boundaries of the City of Canton, Mississippi were such enactments or actions which did affect or change the standard, practice or procedure with respect to voting that existed on November 1, 1964 in the City of Canton, Mississippi.

The Court further finds that at least one the Plaintiffs or Petitioners, namely, Ernest Perkins, is a candidate in the Democratic Primate for alderman for Ward Three of the City of Canton, and that the other plaintiffs are independent candidates who would be affected at least indirectly through the results, or by the results of the Democratic Primary which would select their opponents in the General Election. Ernest Perkins would be directly affected by the holding of said Democratic Primary elections on this coming Tuesday, May 13, 1969.

The Court therefore finds that Section 1973 of 42 U.S.C. were not complied with and therefore, under Section 5 of the Voting Rights Act of 1965, that there was a change in the standard, practice or procedure as set forth therein without the approval of the Attorney General nor the United States District Court for the District of Columbia. However, this matter is to be finally determined by the three judge court and this court does not purport to substitute its judgment at this time for the three judge court nor to speak finally with respect to this court's opinion on this matter, but does find that there is such a question present and such a probability that the three judge court

would so find that to deny a temporary restraining order at this time would cause irreparable harm and injury, not only to Plaintiffs but to other candidates in said election, to the electorate or qualified voters.

This court finds that Plaintiffs are not entitled to the relief requested with respect to enjoining or temporarily restraining of the Democratic Primary by prohibiting those in the newly annexed areas from voting and allowing the primary election to be held through the casting of ballots by only qualified electors residing within the City of Canton, November 1, 1964. It is impossible to determine at this late date, and incidentally the Court notes that this complaint and motion for temporary restraining order were not filed until May 1, 1969 and noticed for hearing on this date, and the Court has given to the Plaintiffs speedy hearing on the date that they requested, namely, today May 9th, 1969, that to give the Plaintiffs the relief that they requested as just previously stated would result in chaos, confusion, probable election contests and other legal action on the part of those who would be deprived and prevented from voting, particularly if the three judge court designated to hear this case decides that there was no violation of Section 5 or any change in the standard, practice or procedure with respect to voting within the meaning of Section 5 of the Voting Rights Act of 1965.

Therefore, it is the opinion of this court that the Democratic Municipal Election that was to be held in the City of Canton, Mississippi on May 13, 1969 will be enjoined in toto provided the Plaintiffs post a bond as required by law in the amount of $2,500.00, in view of the testimony given herein concerning the costs of advertisements, supplies, rental of voting machines by the City of Canton from Madison County.

Counsel for the Plaintiffs will prepare this order granting this temporary restraining order on this basis provided said bond is posted as required by law and by this order

and will submit it to the attorney for Defendants for approval as to form and present this order to the Court on Monday, May 12, 1969.

In the absence of the posting of the required bond, the Motion for Temporary Restraining Order will be overruled and denied.

The above and foregoing Opinion delivered in open court at the conclusion of the hearing on the above referred to Motion on May 8, 1969, and hereby ordered to be made a part of the record in this cause.

WALTER L. NIXON, JR.
United States District Judge

Filed May 12, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Temporary Restraining Order

Plaintiffs filed this civil action for relief against defendants' 1966 and 1968 extensions of the municipal boundaries of the City of Canton, Mississippi, and against defendants' selection of polling places for the May and June, 1969, municipal primary and general elections. Pending the convening of a three-judge court, as required by 42 U.S.C. Section 1973c, plaintiffs moved for a temporary restraining order, on May 9, 1969, this Court, acting through the single judge, heard plaintiffs' motion for a temporary restraining order, limited to the issue whether defendants' attempt to put the changes into effect violated Section 5 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973c. Evidence and argument were presented by plaintiffs and defendants.

On the basis of that evidence, this Court, acting through the single judge, finds that the addition of substantial numbers of people and potential voters to the City of Canton by reason of the 1966 and 1968 annexations probably constitutes a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting digerent from that in force or effect on November 1, 1964," within the meaning of Section 5. The Court further finds that the City of Canton has not obtained a declaratory judgment from the United States District Court for the District of Columbia, to the effect that the changes will not have the effect of denying or abridging the right to vote on account of race or color, nor have the changes been submitted to the Attorney General of the United States. According to Section 5, a change not approved or submitted may not be enforced. Accordingly, it appears that there is a probability of plaintiffs' success on the merits of this case, and that a temporary restraining order is necessary to prevent irreparable injury to plaintiffs' rights.

IT IS THEREFORE ORDERED:

(1) The municipal primary elections of the City of Canton, Mississippi, scheduled for May 13 and 20, 1969, and the municipal general elections of the City of Canton, scheduled for June 3, 1969, are hereby restrained until further order of this Court;

(2) Plaintiffs shall deposit with the Clerk of this Court a bond in the amount of $2500.00, conditioned on payment of any costs incurred by the City of Canton if it is found to have been wrongfully restrained;

(3) The Clerk of this Court shall serve this Order on the defendants by sending a copy, registered mail, return receipt requested, to their attorney of record, R. L. Goza, Esq., 114 West Center Street, Canton, Mississippi, which

form of service shall be adequate notice binding on all the defendants.

Done this 12th day of May, 1969.

Walter L. Nixon, Jr.
United States District Judge

Approved as to form:

Armand Derfner 5/11/69
Counsel for plaintiffs Date

R. L. Goza Date
Counsel for defendants

Filed May 26, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Answer

Comes Now, L. S. Matthews, Mayor of the City of Canton; Glynn Cook, Amos Dowdle, Jr., Earl B. Goolsby, Sr., L. H. Johnson and Hermit Jones, Aldermen of the City of Canton; C. F. Riddell, R. H. Holmes, Dr. G. A. Carmichael, Gus Noble, Mack Ragsdale and Rob Dow, Democratic Municipal Executive Committee of the City of Canton; and R. H. Shackleford, Jr., Joe Iupe, and William B. Crawford, Municipal Election Commission of the City of Canton, defendants herein and for their answer to the complaint exhibited against them deny, allege and say this, to-wit:

FIRST DEFENSE

The defendants move the court to dismiss the complaint against them and for grounds, assign the following:

1. That the court does not have jurisdiction of the defendants or any of them.

2. That the court does not have jurisdiction of subject matter of the complaint.

3. That the complaint fails to state a cause of action under Section 5 of the Voting Rights Act of 1965.

4. That the actions of the defendants complained of do not come within the scope of Section 5 of the Voting Rights Act of 1965 and do not violate the Constitution of the United States or any amendment thereto, including the Fourteenth or Fifteenth Amendments.

WHEREFORE, the defendants pray that the complaint will be dismissed.

SECOND DEFENSE

AND NOW answering the introductory part of the complaint, the defendants say this, to-wit:

1. The defendants admit that part, of the introductory paragraph 1 of the complaint which states the nature of the complaint, but deny the same so far as it purports to allege facts.

2. The defendants deny the allegations contained in the introductory paragraph 2 of the complaint.

3. The defendants admit the allegations of paragraph 3 of the first count of the complaint.

4. The defendants deny the allegations contained in paragraph 4 of the first count of the complaint.

5. The defendants admit the allegations contained in paragraph 5 of the first count of the complaint.

6. The defendants admit the allegations contained in paragraph 6 of the first count of the complaint.

7. The defendants admit the allegations contained in paragraph 7 of the first count of the complaint.

8. In answering paragraph 8 of the first count of the complaint the defendants admit, that they passed ordinances in 1966 and 1968 extending the municipal boundaries of the City of Canton, Mississippi, but deny that the purpose or effect thereof was to draw a substantial number of white voters into the City, and aver that such expansions included members of both the Negro and white race. The defendants further aver that they passed an ordinance expanding the municipal boundaries which became effective in September of 1965, and which included only members of the colored or Negro race.

9. The defendants admit the allegations contained in paragraph 9 of the first count of the complaint, and aver that the expansion in 1965 will likewise be in effect for such primary and general elections.

10. The defendants named in paragraph 6 of the first count of the complaint admit that they are responsible for the conduct of the May 1969 municipal democratic primary election, but deny the remaining allegations of said paragraph and aver that all qualified electors of the City of Canton, including those residing within the areas annexed in 1965, 1966 and 1968 will be permitted to vote in such election.

11. The defendants named in paragraph 7 of the first count of the complaint admit that they are responsible for the conduct of the June 1969 municipal general election, but deny the remainder of said paragraph, and aver that all of the qualified electors of the City of Canton including those residing with the areas annexed thereto in 1965, 1966 and 1968 will be permitted to vote in such election.

12. The defendants deny the allegations contained in paragraph 12 of the first count of the complaint, except

that they admit there has been a substantial increase in the number of qualified electors of the City of Canton since the elections held in 1965, but aver that this has been the result of the normal growth of the municipality for the past four years and not the direct result of the aforesaid expansions.

13. The defendants deny the allegations contained in paragraph 13 of the first count of the complaint, and aver that the 1965 expansion included only members of the Negro race, and that the 1966 and 1968 expansions included members of both races, and that the racial composition of the municipal populace and electorate was not substantially altered; the defendants specifically deny that a large number of white voters were included in said expansions, and that the boundary lines were not drawn in such a manner as to include or exclude anyone on the basis of race; the defendants aver that all of such expansions were made in good faith and for reasons wholly unrelated to race, and pursuant to an over all, comprehensive plan for the expansion of the city as recommended by the city planners and formulated by the governing authorities as early as 1962; that all of such expansions were undertaken and made for the public convenience and necessity, and were reasonable and necessary based upon considerations of future residential, commercial and industrial growth and development, the need for municipal services, the economic and engineering feasibility of rendering such service and the public convenience and necessity; that each of said expansions was submitted to and ratified, confirmed and approved by the Chancery Court of Madison County, Mississippi as provided and required by the applicable statutes of the State of Mississippi that neither the purpose nor the effect thereof was to dilute the effectiveness of black citizens.

14. The defendants deny the allegations of paragraph 14 of count one of the complaint.

15. The defendants deny the allegations contained in paragraph 15 of count one of the complaint.

16. The defendants admit the allegations contained in paragraph 16 of count one of the complaint.

17. The allegations contained in paragraph 17 of count one of the complaint, constitute conclusions of the pleader and are not facts well pled, but that the defendant deny such conclusions, and aver that the qualifications and requisites to voting and the standards, practices and procedures with respect to voting in the City of Canton, Mississippi are the same as those in effect on November 1, 1964.

18. The defendants admit the allegations contained in paragraph 18 of the complaint, but deny that such expansions come with the purview of Section 5 of the Voting Rights Act of 1965, and aver that the defendants are not required to submit the same for approval under said Section since said expansion is in no way related to voting, or any qualification or requisite pertaining thereto.

19. The allegations of paragraph 19 of count one of the complaint constitute conclusions of the pleader and are not facts well pled, but the defendants deny such conclusions.

ANSWER TO SECOND COUNT

20. The defendants hereby incorporate herein each and everyone of their admissions, denials and averments contained in paragraphs 3, 4, 5, 6, 7 and 12 above.

21. The defendants admit the allegations contained in paragraph 21 of count two of the complaint.

22. The defendants admit the allegations contained in paragraph 22 of the second count of the complaint.

23. The defendants admit the allegations contained in paragraph 23 of the second count of the complaint, except that the planned polling place for ward 3 for use in the

1969 elections is erroneously described in the complaint as the Madison County Jail, when in fact it is a county owned building formerly occupied as a jail; and that the complaint erroneously describes the planned polling place for ward four as King Lumber Company, when in fact it was formerly occupied by such company but for the past four years has been and is now the administrative office building of the Canton Municipal Separate School District.

24. The defendants deny the allegations of paragraph 24 of the second count of the complaint, and aver that such polling places have adequate space and facilities, including rest room facilities, to accommodate, all voters and are large enough to permit the voters shelter in the event of inclement weather conditions, and have adequate means of ingress and egress to permit the efficient and expeditious conducting of the election without the voters having to wait in line for long and extended periods of time, as was the case in the polling places previously utilized; that all of the polling places to be used in said elections are readily accessible by all voters, and provide ample parking spaces for the convenience of the voters, without causing congested and hazardous traffic conditions, which have heretofore existed by utilizing the previous polling places; the defendants would further show that the polling places used in the 1965 municipal elections for wards two and three, are privately owned and that the owners thereof would not permit the use of the same in the coming elections, and that in addition, because of the increased number of electors registered in the City of Canton, and expected to participate in said elections, the polling places previously used are inadequate as to interior space and facilities as well as for parking accommodations; that therefore, new polling places had to be selected; that of the numerous locations considered, the chosen polling places represent the most adequate, spacious and convenient for the orderly and expeditious holding of said elections.

25. That paragraph 25 of the second count of the complaint does not contain facts well pled, but merely the conclusions of the pleader as to matters of law, but that the defendants deny such conclusions.

26. That paragraph 26 of the second count of the complaint does not contain facts well pled, but merely the conclusions of law and fact of the pleader, but that the defendants deny such conclusions.

27. The defendants incorporate herein by express reference thereto the denials, admissions and averments contained in paragraphs 21, 22 and 23, as hereinabove stated.

28. That paragraph 28 of the second count of the complaint does not contain facts well pled, but merely the conclusions of the pleader, but the defendants deny such conclusions.

29. The defendants deny the allegations contained in paragraph 29 of the second count of the complaint.

WHEREFORE, the defendants pray that the plaintiffs will be denied relief and that the complaint will be dismissed with prejudice to the plaintiffs.

Respectfully submitted,

/s/ R. L. GOZA
R. L. Goza
Goza, Case & Montgomery
Attorneys at Law
114 W. Center Street
Canton, Mississippi
Attorneys for the defendants

CERTIFICATE OF SERVICE

(omitted)

Filed May 30, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Order

Plaintiffs having moved to file an amendment to the Complaint, and it appearing that justice will be served by allowing the amendment,

IT IS HEREBY ORDERED that the amendment attached hereto be incorporated in the Complaint in this case, and that a copy thereof be served upon Robert L. Goza, Esquire, City Attorney, Canton, Mississippi, as sufficient service and notice to all defendants.

ORDERED this 30th day of May, 1969.

/s/ HAROLD COX
United States District Judge

Filed May 30, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Amendment to Complaint

Pursuant to leave of Court, add the following Third Count (including paragraphs 30-38) to the Complaint, and add the following clause 6 to the prayer for relief:

THIRD COUNT

30. Plaintiffs reallege the allegations of paragraphs 3, 4, 5, 6, 7 and 12 above.

31. Prior to 1969, four members of the Board of Aldermen in the City of Canton were elected by wards, *i.e.*, the voters of Ward 1 chose the alderman from Ward 1, etc.

32. Prior to 1962, this was done pursuant to statute:

> "In all municipalities operating under a code charter and having a population of less than ten thousand, according to the latest available federal census, there shall be five aldermen, which aldermen may be elected from the municipality at large, or in the discretion of the municipal authorities, the municipality may be divided into four wards, with one alderman to be elected from each ward and one from the municipality at large. In all such municipalities having a population of ten thousand, or more, according to the latest available federal census, there shall be seven aldermen, and the municipality shall be divided into six wards with one alderman to be elected from each ward and one from the municipality at large. The municipal authorities may establish as many voting precincts in each ward as may be necessary and desirable. The mayor of the municipality shall be elected from the municipality at large."

[Laws of 1950, Ch. 491, § 26, codified at Miss. Code of 1942, § 3374-36 (main volume).]

33. In 1962, this statute was amended to provide that all voters in the City would vote on all aldermen:

> "In all municipalities having a population of less than ten thousand (10,000), according to the latest available Federal Census, there shall be five (5) aldermen, which aldermen may be elected from the municipality at large, or in the discretion of the municipal authority, the municipality may be divided into four (4) wards, with one alderman to be selected from each ward and one from the municipality at large. On a

petition of twenty per cent (20%) of the qualified electors of any such municipality, the provisions of this Act as to whether or not the aldermen shall be elected from wards or from the city at large shall be determined by the vote of the majority of such qualified electors of such municipality voting in a special election called for that purpose. All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each of the four (4) wards shall select one from the candidates for alderman from each particular ward who shall be a resident of said ward by majority vote of the entire electorate of the municipality."

[Laws of 1962, Ch. 537, codified at Miss. Code of 1942, § 3374-36 (pocket part).]

34. Despite this statutory change, the 1965 municipal elections were conducted in the same manner as had previously been in effect under the pre-1962 law, *i.e.*, each ward elected its own aldermen.

35. Thus, individual ward elections were the "voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" in effect on and after November 1, 1964, within the meaning of 42 U.S.C. § 1973c.

36. On information and belief, the change to a system in which all city voters vote on each alderman has not been submitted to the Attorney General of the United States, nor has a declaratory judgment been obtained, as provided in 42 U.S.C. § 1973c.

37. The effect of the change will be to dilute the effectiveness of the black voters in the City of Canton, because there are heavy black majorities in Wards 3 and 4, while the city-wide registration is approximately evenly divided between black and white voters.

38. The change also violates plaintiffs' rights under the fourteenth and fifteenth amendments to the Constitution of the United States, by abridging their right to vote on grounds of race, and without due process, and by denying them equal protection of the laws.

* * *

6. That this Court order that the elections be held in accordance with the applicable provisions of state and federal law, but that the votes must be counted in the manner heretofore followed, *i.e.*, that only the votes of voters in Ward 1 be counted in determining the winner of the race for alderman in Ward 1, etc.

* * *

Respectfully submitted,

/s/ Armand Derfner
Armand Derfner
James A. Lewis
603 North Farish Street
Jackson, Mississippi
Attorneys for Plaintiffs

May 30, 1969.

Filed July 17, 1969

Opinion of Three-Judge Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Before COLEMAN, Circuit Judge, COX, Chief District Judge, and NIXON, District Judge.

COLEMAN, Circuit Judge.

1. THE CONTROVERSY

Twelve days prior to the date prescribed by law for the holding of Democratic municipal primaries throughout Mississippi, the plaintiffs filed their suit in the District Court. They complained that in 1966 and 1968 the City of Canton, Mississippi, had extended its municipal boundaries, that this caused a large number of white voters to be included in the City, and that this diluted the effectiveness of the vote of newly enfranchised black citizens. It was said that this, in the absence of a submission to the United States Attorney General or a declaratory judgment from the United States District Court for the District of Columbia, was a failure to comply with 42 U.S.C. § 1973c, the Voting Rights Act of 1965.[1]

The complaint also lodged a similar attack against the re-location of polling places within the four wards of the City of Canton.

May 8, 1969, pursuant to a hearing, Judge Nixon granted a temporary restraining order enjoining the holding of the municipal primaries scheduled for May 13 pending the

---

[1] Enacted August 6, 1965, applicable to changes with respect to any voting qualifications, standard practice, or procedure different to that in force on November 1, 1964.

disposition of the case on the merits. No election has been held and the encumbents are holding over in their respective offices, as provided by Mississippi law.

May 15, 1969, the Chief Judge of this Circuit constituted a Three-Judge Court composed of Judges Coleman, Cox, and Nixon.

By leave of the Court, May 30, 1969, the plaintiffs added a third count. This alleged that prior to 1969 four members of the Board of Aldermen in the City of Canton were elected by wards. The complaint acknowledged that in 1962, prior to the enactment of the Voting Rights Act of 1965, the Mississippi Legislature enacted a general statute, amending existing law, to provide that Aldermen in all municipalities of less than ten thousand population shall be elected by a vote of the entire electorate of the municipality, each required to reside in the ward which he proposed to represent on the town council.[2] It was alleged as a fact, which is the fact, that Canton did not comply with this law in the municipal elections of 1965, but followed the old statute, that is, the four aldermen were elected by wards.

In 1969, Canton proposed to comply with the 1962 statute. Plaintiffs say that this would be a change from the procedure in effect on November 1, 1964, and was thus invalid until either submitted to the Attorney General or to the United States District Court for the District of Columbia, as in other cases.

2. The Decision

We have heard this case on stipulations of the parties, exhibits, and oral testimony adduced in open court. We find and hold that under the facts of this case the contentions of the plaintiffs are not well taken, that the tem-

[2] Chapter 537, Laws of Mississippi of 1962, Mississippi Code of 1942, § 3374-36.

porary injunction should be dissolved, and the qualified electors of the City of Canton should be free to hold an election in compliance with the 1962 statute.

3. The Facts

Canton had a population of 9,707 at the last federal census. Approximately 5,900 are registered to vote in municipal elections.

Based on an average index of two voters per residence, which the plaintiffs do not challenge, the 1965 expansion of the Canton City limits brought into the City 46 black voters and no white voters. Plaintiffs do not attack this expansion. The 1966 expansion brought in 28 black voters and 64 white voters. The 1968 expansion brought in 8 black voters and 112 white voters. The sum total of the voters brought within the city limits by the three extensions would be 82 black voters and 176 white voters, or a majority of 94 white voters among those annexed in all three expansions.

One of the plaintiffs, who was a candidate for Mayor in the Democratic primary scheduled for May 13 [which office would have been voted upon city at large in any event] testified that as of January 12, 1969, there were 2052 white voters in Canton and 2794 black voters, a majority of 742 black. He further testified that between January 12 and February 3 approximately 800 white voters registered in the city and only 150 black voters registered. It is to be noted that the figure of 800 new white registrants as contrasted to only 150 black registrants was not supported by documentary evidence but represented the witness's best judgment after an observation of the registration books. If there were 800 new white registrants after January 12 only 176 could have come from the annexed areas, even if all had waited until then to register. In any event all the witnesses agreed that regardless of the 94 net gain in the white vote, brought about by the

expansions, the majority of the electorate in the City of Canton are black.

4. Conclusions of Law on the Applicability of the Act to the Expansions

We are therefore confronted with the question: Did Congress intend (in the affected states) to freeze municipalities to their existing boundaries, prohibiting any municipal expansion even though, as in this case, the annexations included a white majority of 94 in a total voting population of 6,000, not destroying a black majority?

We have been cited nothing to show that Congress either thought of such or intended it. Applying the full reach of the Act, Congress could not have intended such a result unless it were shown to be a stratagem deliberately designed to overturn a black majority at the municipal polls. In Canton, Mississippi, the black voters still had a majority of not less than 600 after the expansions were effected. It is significant that the first expansion brought in 46 black voters and no white voters at all. Moreover, the City has expended over three quarters of a million dollars bringing municipal services to the annexed area, including the all-black annexation of 1965.

We therefore hold that these annexations were not violative of the Voting Rights Act of 1965.[8]

5. Compliance with the Municipal Election Law of 1962

On March 26, 1962, the Supreme Court decided Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed. 2d 663. On May 24, 1962, the Mississippi Legislature, by and with the approval of the Governor, enacted Chapter 537 of the Laws of Mississippi of 1962, entitled "AN ACT pro-

[8] Under Mississippi Law, municipalities may neither expand nor contract their corporate limits at their unfettered discretion. To do either they must petition the Chancery Court, where any party in interest may object and litigate his objections. Mississippi Code 1942, § 3374-10, et seq.

viding for the city-wide election of all individuals comprising the governing authority of any municipality". The Act amended the previously existing § 3374-36, Mississippi Code of 1942, and concluded with the following language, not heretofore in the statute:

> "All aldermen shall be selected by vote of the entire electorate of the municipality. Those municipalities which determine to select one alderman from each ward shall select one of the candidates for alderman from each particular ward by a majority vote of the entire electorate of the municipality".

Plaintiffs do not attack the validity of this amendment. They say it should not be observed in Canton in 1969 because it was not observed in 1965.

This enactment preceded the Voter Rights Act of 1965 by a little over three years. It permitted the requirement that an alderman should reside in the ward he proposes to represent, but the choice is left to all the voters in the municipality, each having an equal voice in the selection of the governing authorities of the city. This complies with the Constitutional requirement of one man—one vote, Dusch v. Davis, 387 U.S. 112, 87 S.Ct. 1554, 18 L.Ed.2d 656 (1967).

We have previously pointed out that in the municipal elections of 1965 Canton did not comply with the 1962 law. The reasons for noncompliance are not shown. In any event, plaintiffs wish to continue the invalid 1965 procedure of allowing each ward to elect its alderman for the reason that in one ward Negro citizens are in the overwhelming majority, leaving them in the position, if they wished, of voting on racial considerations alone and thus having at least one Negro on the City Board.

If race alone is to govern the outcome of elections as well as the official acts of city legislative bodies, it is obvious that if the procedure desired by the plaintiffs were approved then the one Negro member of the Board would

always be outvoted by the four white members. His presence on the City Board would, in practical effect, amount to nothing beyond the presence of a black man who could always cast his dissenting vote. Since a majority of the voters in Canton are black it is equally true that under the 1962 Act the black voters have the power, if they wish to be influenced by race alone to elect an all black governing body.

We do not think, however, that this issue is to be decided by these considerations.

In the first place, the City of Canton should obey the one man—one vote rule. In the second, the 1962 Act antedates the Voting Rights Act of 1965, and could not have been enacted for the purpose of thwarting the latter. In the third, it is axiomatic that a violation of the law in the elections of 1965 does not justify continued violations. The City should comply with the law in 1969, regardless of whether it complied in 1965. Indeed, non-compliance in 1969 would invalidate the election if a challenge were to be raised. We are not impressed with the argument that Congress intended to freeze unlawful election procedures. Unlawful election procedure, insofar as the Fifteenth Amendment applies, is what the Act intends to stop. Moreover, the state statute requiring that aldermen be elected by all the voters of the municipality, instead of from individual wards, brings cities in compliance with the one man —one vote rule, leaving to all the inhabitants an equal voice in the election of their municipal officials, something which Congress could not abrogate without a Constitutional Amendment.

We are therefore of the opinion that the contentions of the plaintiffs on this issue are not due to be sustained.

6. The Change in Polling Places

We find no merit in the attack upon the changes made in the location of the polling places. The evidence on this issue is undisputed. The same number of polling places

will remain in each city ward. No voter will have to go outside his ward to vote. The changes were made necessary because one place did not have space for voting machines, two others had to be moved because they had been situated on private property (bank lobbies) and permission to use the space had been withdrawn, and another was moved out of the courthouse to a school building because facilities were more ample and the move eliminated any interference with sessions of the various courts sitting at the courthouse.

This opinion constitutes our findings of fact and conclusions of law in this case, Rule 52(a), Federal Rules of Civil Procedure.

Judgment may be entered by any Judge of the Court, for the Court, dissolving the temporary injunction and dismissing the complaint.

This July 17th, 1969.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Harold Cox
United States Chief District Judge

/s/Walter L. Nixon, Jr.
United States District Judge

Filed July 24, 1969

Judgment of 3-Judge Court

Pursuant to and in accordance with the opinion of this Court herein, dated July 17, 1969, it is ordered, adjudged and decreed by the Court:

(1) That the complaint as amended of the plaintiffs is without merit and is dismissed with prejudice at the cost of the plaintiffs, to be taxed by the Clerk of this Court according to law;

(2) That the temporary restraining order granted herein on May 12, 1969 at the instance of the plaintiffs was improvidently granted, and the defendants were thus consequently wrongfully restrained from conducting their May 13 and May 20, 1969 primary elections and general election on June 3, 1969 for their municipal officers upon the plaintiffs posting, as they did, a cash bond in the amount of $2,500.00 with the Clerk of this Court, conditioned to pay all damages sustained by the occasioned the defendants as a result thereof. That said cash bond is hereby condemned for the payment of all damages sustained by the defendants as a result thereof and the amount of such damages shall be determined at a hearing before a single judge of this Court (Honorable William Harold Cox, United States District Judge) at a time and place later to be fixed at his direction; and said single judge of this Court is vested with the full and plenary power and authority to hear and decide such question and to enter a proper judgment thereon and order process, the same in all things as if such question were initially addressed to him alone; and that such award shall be and constitute the final judgment of this Court in this case;

(3) That the temporary restraining order herein dated May 12, 1969 is dissolved and abated and the defendants are expressly granted the full power and authority to con-

duct their municipal elections according to law in accordance with the opinion of this Court.

So Ordered, this July 18, A. D., 1969.

/s/ Jas. P. Coleman
United States Circuit Judge

/s/ Harold Cox
United States Chief District Judge

/s/Walter L. Nixon, Jr.
United States District Judge

Filed July 30, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Notice of Appeal

Please take notice that the plaintiffs hereby appeal to the Supreme Court of the United States, pursuant to 28 U.S.C. § 1253, from the judgment of this court entered July 18, 1969, dismissing the complaint.

Respectfully submitted,

/s/ Armand Derfner
Armand Derfner
James A. Lewis
Taunya L. Banks
603 North Farish Street
Jackson, Mississippi
Attorneys for Plaintiffs

Certificate of Service

(omitted)

Filed Aug. 12, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civ. No. 4464

Designation of Record

Come now appellants, pursuant to this Court's Order filed on July 31, 1969, and designate the following portions of the record to be certified to the Clerk of the Supreme Court of the United States:

1. Complaint (April 30, 1969)
2. Transcript of hearing on motion for temporary restraining order, including all exhibits (May 8, 1969)
3. Oral opinion granting temporary restraining order (May 8, 1969)
4. Temporary restraining order (May 12, 1969)
5. Answer (May 23, 1969)
6. Amendment to complaint, and order allowing amendment (May 30, 1969)
7. Transcript of trial, including all exhibits (June 2, 1969)
8. Answer to amendment to complaint (not filed)
9. Opinion (July 17, 1969)
10. Judgment (July 18, 1969)
11. Notice of appeal (July 30, 1969)

Respectfully submitted,

/s/Armand Derfner
Armand Derfner
James A. Lewis
Taunya L. Banks
603 North Farish Street
Jackson, Mississippi 39202

August 11, 1969

Certificate of Service

(Omitted)

Filed Sep. 9, 1969

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action 4464

Motion To Stay Judgment Pending Appeal

Come now the plaintiffs-appellants, having filed a notice of appeal to the Supreme Court of the United States from the judgment of this court dismissing the complaint with prejudice, and move that that judgment be stayed insofar as it allows the 1969 municipal elections to go forward in the City of Canton, and move further that the temporary restraining order previously granted be continued in effect until the Supreme Court of the United States acts in this matter or, in the alternative, that a temporary restraining order be granted until the court of three judges can grant an injunction pending appeal.

In support of this motion, plaintiffs-appellants would show that the defendants have ordered the elections to go forward beginning with the first primary on October 7, 1969; that gaining full relief after an election has already been will be difficult even if plaintiffs-appellants obtain a reversal, in view of the reluctance of courts to set aside elections, *see Allen* v. *Board of Elections*, 393 U.S. — (1969), and the resultant confusion to the voters; that plaintiffs-appellants believe they have a meritorious appeal; and that the corresponding injury by granting this motion will be slight, since plaintiffs-appellants expect to submit their jurisdictional statement and docket the appeal by September 15, 1969, which means the Supreme Court would, in the ordinary course, accept or decline jurisdiction by November 1, 1969.

For the above-stated reasons, plaintiffs-appellants move that the elections be delayed until the Supreme Court of the United States accepts or declines jurisdiction.

Respectfully submitted,

s/ ARMAND DERFNER
Armand Derfner
James A. Lewis
Taunya L. Banks
603 North Farish Street
Jackson, Mississippi
Attorneys for Appellants

September 5, 1969

Filed Sep. 23, 1969

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

Civil Action No. 4464

Order

Plaintiffs-Appellants having moved to stay that portion of the judgment of dismissal which allows the elections in the City of Canton to go forward, and having moved to restrain the holding of those elections, and the court finding that the motion is not well taken,

IT IS HEREBY ORDERED that the motion for a partial stay and to restrain the holding of the elections is denied, without prejudice to the plaintiffs-appellants' right, in the event the judgment of this court is reversed, to apply to this court for an order setting the elections aside.

Ordered this 12 day of September, 1969.

/s/ JAS. P. COLEMAN
United States Circuit Judge

Excerpts From Transcript of Proceedings of May 9, 1969

[12] **Mr. Robert Chinn,**

was thereupon called as a witness on behalf of the Plaintiff, and having been duly sworn, testified on his oath as follows:

* * * * * * * * * *

[30] Q. Mr. Chinn, it has been stipulated that the most recent previous elections in Ward Three, that is the elections for officers every four years, '53, '57, 1961 and 1965, have all taken place in the Canton Exchange Bank and that the upcoming elections plan to take place in the Madison County Jail. Are you familiar with the location of the Canton Exchange Bank? A. Yes, I am.

Q. And where is that, in town? A. The Canton Exchange Bank is located right off the [31] square, it is on the square.

Q. The center square in town? A. That's right. On Peace Street on the right hand side, coming into town.

Q. And where is the Madison County Jail? A. The Madison County Jail is located around about four blocks over on Fulton Street.

By Mr. Goza:

If your Honor please, for the accuracy of the record, that building they refer to is not the Madison County Jail. It is a building formerly occupied by the Madison County Jail.

By Mr. Derfner:

The new Madison County Jail is not even in the City of Canton.

By Mr. Goza:

That is correct.

By Mr. Derfner: (continuing direct examination)

Q. And likewise the stipulation is that the previous general elections for Ward Four have all taken place at the courthouse and that the upcoming elections plan to take place at the King Lumber Company. Are you familiar with the location of the courthouse? A. Yes, I am.

Q. Where is that? A. Located on the square in the middle part of town.

[32] Q. And where is the King Lumber Company located? A. It is located out about Lincoln—let's see, out there in the saw mill area. In the saw mill quarter area. I could point it out on the map.

* * * * * * * * * *

[36] Q. I am showing you five photographs, Mr. Chinn and I ask you if you can identify them? A. This is the Old County Jail here, located on Fulton Street, Ward Three, where they are supposed to vote this time. This has never been used for voting.

Q. Are all of the pictures of the Old County Jail? A. This is another picture of the Old County Jail. This is another one, and this is another one and this also is another one.

By Mr. Derfner:

I would like those marked as Plaintiffs Exhibits One through Five and introduced into evidence.

* * * * * * * * * *

By the Court:

Let these five photographs be admitted in evidence and marked as one Exhibit, Plaintiff's Exhibit One.

[37] (Same Received in Evidence and Marked Exhibit P-1)

By Mr. Derfner: (continuing direct examination)

Q. Did you go inside that building, Mr. Chinn? A. I looked inside of it. I couldn't go inside because it was locked.

Q. What did you see inside? A. I seen screen doors laying on the floor and screen hanging all over the place.

Q. Did you notice the condition of the floor boards, either inside or out on the porch? A. Buckled up and loose.

Q. Have you ever been in that jail yourself? Inside that jail? A. I have

Q. When was that? A. In 1965.

Q. What were you there for? A. Picketing.

Q. What happened to the charges? A. The charges were dropped.

By the Court:

What has that got to do with this case, Counsel?

By Mr. Derfner:

I want to establish the witness' familiarity with the jail and at the same time I don't want his credibility as a witness [39] to be prejudiced by the fact that he has been in as a prisoner.

By the Court:

All right, let's proceed and let's get to the issues in this case. Stick to the issues in this case.

By Mr. Derfner: (continuing direct examination)

Q. Is that building roomy? A. No it is not roomy. The corridor in there is only around about four feet, I think. The hall.

Q. Are there any big rooms? A. The rooms are around about twelve by twelve.

Q. Is it well lit? A. No, it is not.

By the Court:

When were you last inside?

By the Witness:

Last inside in '65. I looked inside of it the other day, in one room.

By the Court:

Could you tell what the lighting condition was the other day in this buildings?

By the Witness:

It was in the daytime, nothing was being used in there and the lights wasn't on.

By Mr. Derfner: (continuing direct examination)

Q. Was there substantial sun light in the building? [40]
A. No.

Q. Of your knowledge, just answer this question yes or no, do you know if the black community in the City of Canton has an impression or reaction about that building?

By Mr. Goza:

Your Honor, we object to that question as calling for a conclusion of this witness.

By the Court:

Sustain the objection. * * *

* * * * * * * * * * *

By Mr. Derfner: (continuing direct examination)

Q. Has there been any public discussion or public meetings among the black citizens in the City of Canton and public statements in connection with that building or events in that building in the past year?

By Mr. Goza:

Your Honor, [41] we object to that as being irrelevant and based on hearsay.

By the Court:

Will you repeat that question—Counsel?

By Mr. Derfner:

The question was has there been either public discussions, public meetings or public statements in the black community of the City of Canton about that building in the past. I think, the relevance, your Honor, is when I complete the line of questioning, I think it will show that there is a definite fear and antagonism on the part of black people in the City of Canton which has been demonstrated by statements, meetings and discussions relating to event that have taken place in there, and therefore it would act as a significant deterrent on the willingness of people to go to that building to exercise as important a right as voting.

By Mr. Goza:

Your Honor, our objection is based on the fact that this witness may be permitted to testify about how he personally feels but it is stretching a point to say that he can get up here and testify as to what twenty-five hundred or twenty-six hundred colored voters feel.

By the Court:

I sustain the objection. He can testify as to his own personal feeling toward this matter.

By Mr. Derfner:

[42] May I make a proffer on this point, your Honor?

By the Court:

Yes, you may.

By Mr. Derfner:

The proffer is that if the witness were allowed to testify to answer the last question and the line of questioning developed from that, he would testify that as recently as last Fall there was a juvenile incarcerated in that jail for several weeks, that the juvenile's name was Cleo Clark, that the juvenile was finally released from jail on an order of Habeas Corpus granted by this Court; that that juvenile was mistreated or at least claims he was mistreated and it is the belief of many or most black people in the City of Canton, Mississippi, that he was in fact mistreated in the jail and by officials of the jail and that there were numerous public meetings including some of them attended by as many as five, six or seven hundred people in the City of Canton complaining about this treatment and voicing dissatisfaction with that building and all the events that had gone on in there. That the result of that, of those meetings was to start a movement of some sorts, including a selective buying campaign in the City of Canton and that many of the—many or most of the black citizens of the City of Canton are engaged in what might be called political activity or organizational activity which has grown out of events that took place in that building.

[43] By the Court:

To me, that would not be simple hearsay, it would be compounded hearsay and I will sustain the objection. Your offer is made.

By Mr. Derfner:

Thank you, Your Honor.

By the Court:

I might say that I am familiar with the Cleo Clark case. I am the one that turned him lose but I found no evidence

of mistreatment in that case. I found he was being held illegally, however.

By Mr. Derfner:

I ddin't mean to imply, Your Honor, that the Habeas Corpus was granted in relation to the mistreatment, it was on the grounds of custody.

By the Court:

All right.

By Mr. Derfner: (continuing direct examination)

Q. I am showing you four pictures, Mr. Chinn, and ask you if you can identify those pictures? A. This is the School Administration Building here that is going to be used. Ward Four, newly voting precinct.

Q. Have you heard that building referred to as the King Lumber Company, in recent times? A. Yes, sure.

[44] Q. And where have you heard or seen it referred to as the King Lumber Company? A. From all the folks that live out there, everybody that lives in the City and the County.

• • • • • • • • • • •

[54] Cross Examination

By Mr. Goza:

• • • • • • • • • • •

[58] Q. Do you know how many houses—you have testified from Plaintiff's Exhibit "A", as to the area which was annexed in 1966 and the number of houses that were in it as of last Monday when you counted them. How many houses were in that area [59] at the time of the annexation or in 1966? A. In terms of the first one or the last one?

Q. In 1966, the part east of town as shown on Exhibit "A". A. May I see those exhibits, please?

Q. If you need to use the pointer, you may do so. A. I would say approximately, in this area over here which has been newly developed, about three years, which would catch 1966, you said, didn't you? You said 1966?

Q. 1966. A. Approximately a hundred houses east of Canton and west of Forty-three, including those two areas, and behind Mr. A. C. Slaughter's store, down east, going towards Madison Woodwork.

Q. Did you count those houses in 1966 when this expansion became effective? A. I counted them.

Q. In 1966? A. No, not in 1966.

Q. Do you know how many houses were in that area in 1966? A. I don't know how many was in there in 1966, no.

• • • • • • • • • • •

[68] Q. Now, you have sought public office on two other [69] occasions, is that not correct? A. That's right.

Q. In what elections? In what years? A. In 1966 and 1967.

Q. Which year did you run for supervisor? A. In 1967.

Q. And you ran for Constable in 1966? A. That's right.

Q. State whether or not the City Hall of the City of Canton was used as a polling place in those elections by the County? A. The City Hall?

Q. The City Hall. A. The City Hall was used, the Courthouse was used and the Armory was used.

Q. So you are not down here telling the Court that this is the first time the City Hall has been used for a polling place? A. No, I am not saying this is the first time City Hall has been used. It is the County now. We are talking

about a County thing, right? You are talking about a County election?

Q. That was my question. State whether or not you participated in a City election in November of 1969, a bond election?

By the Court:

You mean Sixty-eight?

[70] By Mr. Goza:

Sixty-eight, excuse me, your Honor.

By the Witness:

Sixty-eight, I did.

By Mr. Goza: (continuing cross examination)

Q. State whether or not City Hall was used as a polling place at that election? A. As I recall the polling places where the bond issue was Shackleford Insurance, Courthouse the Employment Office—I believe City Hall.

Q. City Hall. And you participated in that election? A. I did.

. . . . . .

[72] Q. Are there any other members of the Colored Race seeking—running in the Democratic Primary? A. Yes, sir.

Q. Who is that? A. Mr. Cooper.

[73] Q. Is he a party to this lawsuit? A. In terms of name on petition?

Q. Right. A. No.

Q. Are there any other independent candidates of the colored race seeking election in the General Election who are not named in this Petition by name? A. One person.

Q. Who is that? A. Mr. Sam Young, for reasons, if you want me to explain.

Q. I want you to tell me whether he is or not, is what I want to know. A. He is not.

Q. What office is he seeking? A. Alderman from Ward Three.

By the Court:

As a Democrat?

By the Witness:

Independent.

. . . . . .

[74] Q. Where is the Parish Center in regard to the City Hall? A. Approximately twenty-five to fifty yards. Right across the street. It is in front of it.

Q. Where is the Old Jail building in regard to the City Hall? A. About two hundred yards behind the City Hall.

Q. In other words, all three of them are right there [75] together, are they not? A. All three of them are right there together.

. . . . . .

[79] Redirect Examination

By Mr. Derfner:

Q. Were the old polling places close together? A. They were.

Q. Are the new polling places close together? A. They are.

Q. Is King Lumber Company close to the other polling places? A. No.

Q. And where were the old polling places when they were close together? A. It was City Hall—in terms of the City election?

Q. You say they were all close together. Where were they grouped in one area? A. They were.

Q. Could you describe that area? A. Most of them were on the square.

Q. Courthouse square? [80] A. That's right.

. . . . . .

[82] **Mr. Gus Noble.**

was thereupon called as a witness, having been duly sworn, testified on his oath as follows, on behalf of the Defendants:

Direct Examination

By Mr. Goza:

Q. Please state your name to the Court? A. Gus Noble.

Q. Where do you live, Mr. Noble? A. 701 Kathy Circle, Canton, Mississippi.

Q. What is your business or occupation? A. My business is insurance and real estate at 118 North Liberty Street, Canton, Mississippi.

Q. How long have you engaged in the real estate business? A. For the last eighteen years.

Q. Do you hold any license from the State of Mississippi to engage in real estate? A. Yes, I do, a brokers license.

Q. How long have you been a licensed broker? A. About the last ten years, sir.

Q. What types of property—with which types of property do you deal? [83] A. All types, farm property, residential property and commercial property. Rental property.

Q. How long have you lived in the City of Canton? A. Other than my military career, sir, all my life.

Q. Are you familiar with its growth and expansion over the last ten years? A. Yes, I am.

Q. Did you serve on any—have you served on any type commission in the City of Canton in regard to growth and expansion of the City? A. Yes, sir, I was commissioner of the zoning and development commission for the City of Canton and Madison County.

Q. When was that? A. In 1959 to approximately 1963.

By the Court:

Mr. Goza, I would like to say this right now, the case of Allen versus State Board of Elections was decided unanimously by the United States Supreme Court on March 3,

1969 and limits this hearing to two issues. One, whether or not there has been a change by a state or any political subdivision in any of its laws which constitutes—enactment of which constitutes a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section Five of the Voting Rights Act of 1965 and which would or could affect by a dillution of voting power as well as an absolute [84] prohibition on casting a ballot and if so whether or not the political subdivision that made this change had secured from the District Court for the District of Columbia a declaratory judgment authorizing this change or had obtained the approval of the Attorney General of the United States and those are really the only issues before us at this time. That is the law as announced by the United States Supreme Court.

I think that under the law now, that the Defendants who make such a change without the authority must obtain that authority and must there prove before the United States District Court for the District of Columbia, or to the satisfaction of the Attorney General of the United States that the change that was made was not made for the purpose—that is, was not made in prohibition of Voting Rights Act of 1965, which the Courts have held was enacted to protect citizens' rights under the Fourteenth and Fifteenth Amendments to the United States Constitution.

I don't think that this court can now concern itself with or have the authority to make any determination in that regard at this time. I am not stating this or holding that the City of Canton had any ulterior motive or had anything in mind by these annexations to deprive any citizen of his vote or to dillute the voting rights of the Negro citizens of the City of Canton, but that's not, under the law now, since the recent decision of Allen versus Board of—State Board of Elections, [85] which was a Mississippi case, that is a matter that has to be either litigated before the United States District Court for the District of Colum-

bia, or a matter which has to be taken up with the Attorney General of the United States.

I can't say that I agree with the philosophy or the basis for the holding by the United States Supreme Court, but nevertheless I am certainly bound by it and I will never shirk my duty to follow it until the law is changed.

Therefore, I think we are getting ready to go into something now which is really not relevant at this particular time before this Court. This is a matter that must be presented under the—under 42 U.S.C. Section 1973 to the United States District Court for the District of Columbia, or to the Attorney General of the United States if his approval is sought in this regard and the only issues before this Court were whether or not the State or one of its political subdivisions, which is a city, an incorporated city, has changed its law or enacted a law or—let me use the precise language—shall enact or seek to administer any voting qualification or prerequisite or standard, practice or procedure with respect to voting different from that that was in effect and in force on November 1, 1964, and the Supreme Court in Allen versus the State Board of Elections held that this provision must be given a very liberal interpretation and that if there is any act done or any enactment by the State or any City within the State which would in any way involve [86] a change from the situation that existed on November 1, 1964 which could affect by a dillution of voting power the voting in any such subdivision of the state or political subdivision thereof which would possibly affect voting qualifications, prerequisites, standards, practice or procedure with respect to voting within the meaning of Section Five of the Voting Rights Act of 1965, then it became the duty and responsibility of the political subdivision to either obtain a declaratory judgment from the United States District Court for the District of Columbia or Attorney General of the United States to put that change into effect, and it has been stipulated that there has been no request or any act of the Attorney General nor any action filed in the United States District Court

for the District of Columbia, so the only question before the Court at this time, as I see it, is whether or not there was a change and secondly, whether or not this change in any way constituted a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting which did not exist on November 1, 1964. No other issue is before us at this particular time. The law specifically and clearly states that the burden is on the City in this particular instance.

By Mr. Goza: Yes, sir.

By the Court: To convince the Attorney General of the United States [87] or the District Court for the District of Columbia that the change in procedure or voting qualifications or standard or practice was not done for the purposes prohibited by and protected by the Section Five of the Voting Rights Act of 1965.

That is not a matter that this Court can determine. The only matter that this Court is called upon to determine now is whether or not there was such a change which would dillute or affect voting rights because of the change in standard, practice and procedure or voting qualifications, other than those or from those that existed on November 1, 1964.

So the Court is of the opinion that the matter that we are going into now, which I think you are trying to prove by that, is there was no ulterior motive—

By Mr. Goza: —That's correct.

By the Court: —or rather no illegal motive or motive to deny any citizen his right to vote or to dillute his vote, I don't think that that is a matter properly before the Court at this time.

By Mr. Goza: I believe you are correct, your Honor. The purpose of part of this was to show that these things were done in the ordinary course of business, so to speak, and done in good faith.

By the Court: I don't think they were done for any other reason. I [88] think they were done in good faith. I don't think they were done for any other reason, that I

have been done so far, I don't think they were done for the reason that the Plaintiffs or Petitioners herein allege they were done for, but at the same time that question or that matter of determination by me has been completely taken away by the laws enacted by the Congress and by the decision of the United States Supreme Court in Allen versus State Board of Elections. I am not to determine that. All I can determine under the law is whether or not there has been such a change in standard, practice or procedure of voting qualifications or prerequisite than those that existed on November 1st, 1964, and after that—with out approval, which has been stipulated that that has not been requested and without that we can't go any further in this case.

By Mr. Goza: I see, Sir. The second purpose of Mr. Noble's testimony was to show that in the area that—what I call the eastern annexed area, the 1966 area, that a large number of the people who live there now were residents of and qualified electors of the City of Canton on November 1, 1964, who have subsequently moved into this area.

By the Court: I would let you go into that.

By Mr. Goza: And then the second is the reason the polling places were [89] changed, for the Court's benefit in this, that two of the polling places that were used prior to November 1, 1964 are not available to the City. They just can't be used.

By the Court: I would let you go into that.

By Mr. Goza: (continuing direct examination of Mr. Noble)

Q. Mr. Noble, are you familiar with the area which the City annexed in 1966? A. Yes, sir, I am.

Q. And in what area is that? A. The east part of the City, sir.

Q. Do you know how many houses were in this annexed area when it was annexed? A. I would estimate about twenty.

Q. Do you know how many houses there are now? A. Approximately sixty.

Q. Do you know whether or not—by the way, are you connected in any way with the development of that area? A. Yes, sir, we have a construction company which builds new homes and we have built quite a few in this area, sir.

Q. Are you familiar with the persons who have bought these homes and who have moved into them? A. To a great degree, yes, sir.

Q. Con you estimate the number of people in the eastern area who were qualified electors of the City of Canton on November [90] 1st, 1964 and have since moved into the annexed area? A. It would be just a rough estimate, Mr. Goza, but I would estimate maybe twenty-five or thirty.

Q. Twenty-five or thirty people? A. Yes, sir, about fifteen families.

Q. Do you know what the population of that area is now? A. I would estimate perhaps ninety or a hundred persons in this area. I am not positive about that, sir.

Q. Do you know what the population of the area was in 1966 when it was annexed, your best estimate?

By the Court: Are you talking about voters or population?

By Mr. Goza: Population, your Honor.

By the Witness: This is the question, Mr. Goza because we are getting into children and I am trying to estimate the adults in this area.

By Mr. Goza: (continuing direct examination)

Q. Base it on the adult population. A. I would hate to venture a guess, Mr. Goza, because it would be just a rough estimate on my part, I would say perhaps fifty-five or sixty.

Q. Who lived in the area at that time? A. In 1966? [91] Q. Yes. A. No, sir, maybe without going house by house down the different streets it would be very difficult to do, which I am trying to do mentally but I am having a problem of keeping up with the streets and houses.

Q. I see. Are you familiar with the area which the City annexed in 1968? A. Yes, sir.

Q. Do you know the number of houses in that area? A. Approximately a hundred houses, sir.

Q. Can you give us an estimate of the adult population of that area? A. Perhaps a hundred and eighty, sir.

Q. Mr. Noble, do you hold any position with the City of Canton at this time or any of its agents? A. I am a member of the Democratic Election Commission, sir.

Q. State whether or not you played any part in the selection of the polling places which we propose to use in the primary and general elections? A. Yes, sir, I did.

Q. I call your attention to the First National Bank building. Until this year, has that been used as a polling place in the City of Canton? A. It has in the past, yes, sir.

[92] Q. Why was it not so designated for this election? A. The Board of Directors and the President of the Bank asked that it not be used in the future for security regulations. The polls open at seven and the bank's legal hours are from nine until two and the polls remain open until six. The use of voting machines now, they are approximately six feet long and they take up quite a bit of room. I think the plan is for five machines for that ward and there is just not enough room in the small lobby of the bank, sir, and this is true also of the Canton Exchange Bank. They have asked that their facilities not be considered for use any longer.

By the Court: We are going into this question of motive again.

By Mr. Goza: Yes, sir, your Honor, I don't know how to get around this.

By the Court: I am powerless to decide this case on the question of motive. That is a matter that the Congress and the United States Supreme Court has said is left up to the Attorney General of the United States and the District Court for the District of Columbia. It completely deprives the United States District Courts of the districts

in which these matter come up and arise from making a determination in this matter.

By Mr. Goza: Your Honor, the purpose of this was not so much the [93] motive but the fact that if an election is going to be held at all in Wards Two and Three, it will have to be held somewhere else from the old places. There is just no way—that's the dilemma that we are in, that those people have no place to vote any more and I certainly don't think it is the intention of the Congress or the Court to require the owner of private property to let it be used as a polling place.

By the Court: The changing of polling places doesn't impress me at all as changing any standard or real procedure or practice that is meaningful. The thing that concerns me is the annexation of these two new areas and increasing the number of voters who could vote in the City of Canton, that is, it took in new areas just as the State Legislature did when it authorized county wide elections for supervisors of each beat, and that's exactly what was struck down and prohibited in Allen versus State Board of Elections.

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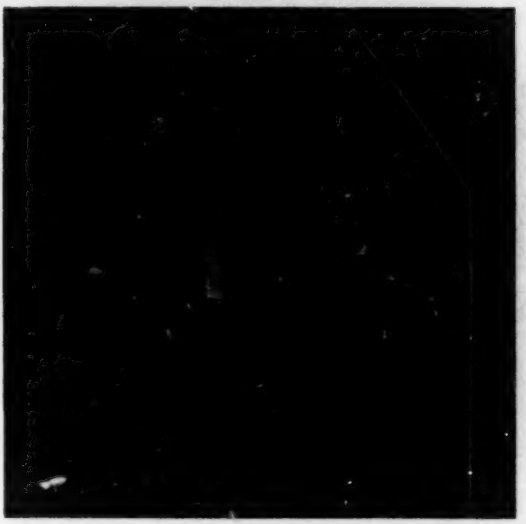
Exhibit P-1



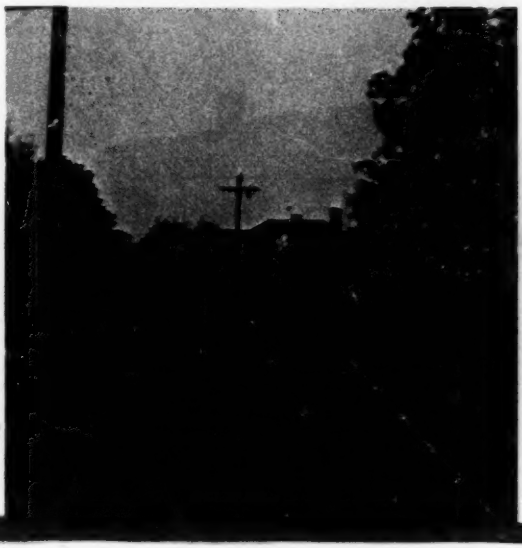


Exhibit P-1 (Continued)

Exhibit P-1 (Continued)

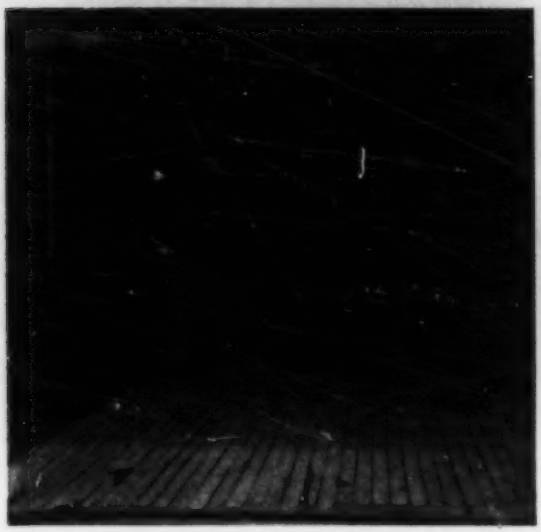


Exhibit P-2

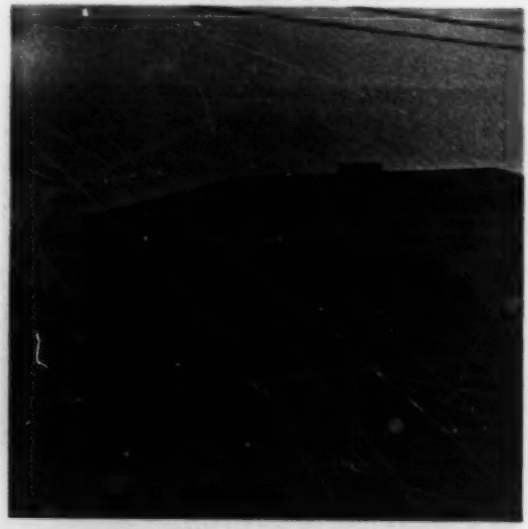


Exhibit P-2 (Continued)

Exhibit P-3

Exhibit P-7

Excerpts from Transcript of Proceedings of June 2, 1969

[1] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action Number 4464

ERNEST PERKINS, JOHN NICHOLS, ROBERT CHINN, CHARLES HARRIS, JR., FLONZIE GOODLOE, and VERA COLLINS, on their behalf and on behalf of all others similarly situated, *Plaintiffs*

v.

L. S. MATTHEWS, MAYOR OF THE CITY OF CANTON, GLYNN COOK, AMOS DOWDLE, JR., EARL B. GOOLSBY, SR., L. H. JOHNSON and HERMIT JONES, Aldermen of the City of Canton; C. F. RIDDELL, R. H. HOLMES, DR. G. A. CARMICHAEL, GUS NOBLE, MACK RAGSDALE and ROB DOW, Democratic Municipal executive committee of the City of Canton; and R. H. SHACKLEFORD, JR., JOE IUPE, and WILLIAM B. CRAWFORD, Municipal Election Commission of the City of Canton, *Defendants*

APPEARANCES:

ARMAND DERFNER and TAUNYA LOVELL BANKS, 603 North Farish Street, Jackson, Mississippi;
For the Plaintiffs.

ROBERT L. GOZA, and BOB MONTGOMERY, 114 West Center Street, Canton, Mississippi;
For the Defendants.

[2] BE IT REMEMBERED that on, to-wit: Monday, June 2, 1969, the above styled and numbered cause came on for hearing before the HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE WILLIAM HAROLD COX, United States District Judge, and HONORABLE WALTER L. NIXON, JR., United States District Judge, at Jackson, Mississippi, in the Jackson Division, when the following proceedings were had and entered of record:

• • • • • • • • • •

[8] By Judge Cox: [9] Let's move along, gentlemen. As I recall it this morning it was agreed by counsel that the 1965 extension embraced 23 houses with 46 voters, all negro.

By Mr. Doerfner: That's right, Your Honor.

By Judge Cox: You couldn't make an agreement as to what was embraced in 1966 extension so that will be a subject matter of proof. 1968 extension it was agreed that it embraced 60 houses, 56 of which were white and 4 of which were colored involving 120 voters. Is that correct, counsel?

By Mr. Goza: That is correct, Your Honor.

By Mr. Doerfner: Yes, sir. The numbers of voters are approximate and based on just a rough formula counting an average of 2 voters per house.

• • • • • • • • • • •

[11] First witness is Mr. John Nichols

John Andrew Nichols

called as a witness for and on behalf of Plaintiffs, was sworn and testified as follows:

Direct Examination

[12] By Mr. Doerfner:

Q. State your name sir? A. John Andrew Nichols.

• • • • • • • • • • •

Q. And where do you reside? A. In Canton, Mississippi.

Q. What is your occupation? A. I'm a lawyer.

Q. How old are you? A. 26.

Q. And how long have you lived in Canton, Mississippi? A. All my life.

Q. Are you a plaintiff in this case? A. Yes, I am.

Q. In what status? A. I'm sorry.

Q. In what status are you a plaintiff? A. I'm a plaintiff as one of the candidate. I'm a candidate for mayor in the City of Canton in the upcoming elections.

Q. And are you familiar with population of the City of

[13] Canton both in terms of its general location and its racial breakdown? A. Yes, I think so.

Q. And in what way are you familiar with that or how have you become familiar with that? A. I am familiar by the fact that I have resided in the town all my life and uhh as far as breakdown goes I'm uhh I have done voter registration campaign in the City of Canton and I'm also familiar on that basis with the uhh residential areas and the uhh number of registered voters and the approximate population of the town.

Q. In terms of that registration campaign have you seen the list of registered voters in the City of Canton? A. Yes, I have.

Q. And when have you seen those? A. I saw, have seen them on numerous occasions. Uhh one I saw them on about January 12th, uhh 12th or 13th, in the City Clerk's office at City Hall in Canton and I saw them later on couple of later occasions just too uhh for my own purposes.

Q. Have you worked with those lists? A. Yes, I have.

Q. For what purpose? A. Well, uhh to approximate the voting uhh registration [14] and strength in Canton we went over the lists and copied them by hand uhh beginning on January 12th or 13th and uhh since that time we also had uhh our campaign and we have been back over the lists then to approximate the number of voters who are registered during our campaign and to give a new picture of the strength of the voters in Canton.

By Judge Nixon: You an independent or a democrat in the coming election?

By the Witness: I'm an independent.

* * * * * * * * * *

By Mr. Doerfner:

Q. I'm showing you three pages, Mr. Nichols, and ask if you can identify those pages? A. Yes, I can.

Q. What are they? A. These are copies of uhh calcu-

lator tapes which I used [15] to figure out the number of voters in each ward for the City of Canton.

Q. And do the totals on those pages reflect your estimate of the number of whites and number of blacks registered in each ward as at a certain date? A. The totals do that and uhh they represent the uhh the list as it was hand copied after uhh on about January the 12th, 1969.

Q. And you have on there as I gather both individual ward breakdowns and total breakdown? A. Right.

Q. What is the total breakdown by black and white? A. Total is 2052 black, this is as of January 12th or 13th, 1969, and 2,794 black.

Q. 2052 white and 2794 black? A. Right.

Q. And as— A. (Interrupting) As of January 12th.

Q. And this is based on your estimate based on your analysis of the names and addresses of the people on the list? A. Right. I went through the list personally. I went through each name to uhh check by residence and name or by address and name uhh whether a person was approximate black or white and uhh I came up with [16] totals as result.

Q. You are not saying those are precise totals to the exact number are you? A. No, I'm not.

Q. You could be off by a little bit? A. Right, but I think its 95% or more correct.

Q. Has there been, was there subsequent registration after that date of voters who would have been eligible for this election? A. Right. Well as I stated we did a voter registration campaign leading up to uhh February 3rd which would have been the cutoff date for people who could have registered and voted in the June elections, in the May and June elections and uhh during that campaign we registered uhh approximately 150 more black people and they were approximately uhh I think 800 or 810 uhh white voters registered in the same period.

Q. And would that also include people who had registered with the federal registrar after February 3rd? A. No, those figures I just gave you do not.

Q. And were there some few additional voters registered with the federal registrars? A. Right. Uhh I don't have any figures off hand but there were approximately, I really can't approximate but I just uhh would guess but there were a number of them [17] registered after.

Q. Would it be fewer than 100? A. I would say it would be approximately 100 maybe.

Q. And you don't have the racial breakdown of those figures? A. No, I don't.

By Mr. Doerfner:

I would like to have those three sheets marked for identification and introduced into evidence as exhibit to plaintiff Nichols' testimony.

By Judge Coleman:

Let them be so marked and admitted.

(Received in evidence and marked Plaintiff's Exhibit .)

By Mr. Doerfner:

I would like to have the map shown to the witness please.

Q. Now, Mr. Nichols, I direct your attention on that map, I'm sorry. Could I have the, could I have the witness shown the exhibit for another moment? Could you show the witness the exhibit again, the original exhibit, those three pages. Mr. Nichols, do those, does that exhibit indicate which are black majority wards and which are white majority wards and by about how much? A. Yes, they do.

Q. What does it show as to that? [18] A. Uhh predominantly black wards are wards three and four.

* * * * * * * * * *

By the Witness:

Right. The predominantly negro wards are wards three and ward four and in ward three there's approximately uhh an 1100, yes, an 1100 uhh black majority and in ward four there is approximately uhh 700 vote black majority.

By Mr. Doerfner:

Q. Thank you. Now can I have him shown the map?

By Judge Cox:

You have already counted votes have you?

By the Witness:

I'm sorry sir.

[19] By Judge Cox:

You tell us about what the majorities are. You have already counted the votes have you, you say there will be 700?

By the Witness:

Uhh I counted the names on the lists that I had, I didn't count votes, no sir.

By Judge Cox:

You assume they are going to vote by race. I thought that had been condemned by everybody.

By the Witness:

No, I just uhh uhh I used the term voters loosely, Your Honor. The word black registered voters as I stated would be more correct.

* * * * * * * * * *

[24] By Judge Coleman:

Have your witness to mark these locations on the map without any further elaboration to us. If you want to make it a part of the record just let him mark the places because I am as familiar with Canton as you are in all likelihood and probably more so. I know where these places all are and we are taking up a lot of time unnecessarily if you are trying to proce the case before us. Let him take his pencil, mark these locations, write out by them what they are, and let's to on with our proof, because we are wasting a lot of time.

[25] By Mr. Doerfner:

Q. Mr. Nichols,—

By Judge Cox:

Let him do that when he steps off the stand.

By Judge Coleman:

Yes, he can do that when he comes off the witness stand.

By Mr. Doerfner:

Okay.

Q. Mr. Nichols. refering to ward four in the city would you indicate what the racial composition of the neighborhoods is with especial reference to the location of polling places? A. Where the polling place was uhh designated by the city ordinance to be for these elections 1969 it is where I have number two which is about here and its located in a predominantly white area and its near also a white church borders right near the polling place. Now uhh in ward, and basically what you can do is that bring this line, this boundary line in to about here—

Q. (Interrupting) Which boundary line is that? A. This is the boundary line for ward four where—

Q. (Interrupting) Along what street? A. This is on Yandell Street and if you just extend it out to uhh approximately uhh the railroad crossing—

Q. (Interrupting) West? [26] A. Yes, west, to about the railroad crossing and go uhh about due north the whole area would be totally almost totally white and all the rest of the area from the railroad crossing further west to the boundary of the city and on south would be practically all black.

Q. And is that new polling place also near the newly annexed area? A. Yes, it is. Its uhh, its right I think within a half mile to a mile of the polling uhh new annexation zone.

Q. Have you seen elections being conducted in Canton in the past few years? A. Yes, I have.

Q. And how many have you seen? A. Oh, I've seen—

. . . . . .

By the Witness:

In 1967 I saw the uhh democratic party primaries and run off. Uhh elections in 1968 I saw the presidential [27] election.

Q. And have you seen the elections in ward four in these areas at these times? A. On those three occasions?

Q. Yes. A. Yes, I did.

Q. And the elections in that area for the county and state elections? A. Well all uhh most of the people in what is ward four would be in what is called uhh in the county the west ward and they all voted up here at the armory which is on Park Street in Canton, the National Guard Armory. Q. And have you observed by what means most of the black voters in ward four have reached the polling place? A. Majority of them walk.

Q. Thank you. I direction your attention further, Mr. Nichols, to the, I'm sorry, strike that?

By Judge Nixon:

How far is the old from the new polling place in ward four?

. . . . . .

[28] By the Witness:

I'd say about maybe half a mile to a mile, Your Honor, or maybe, that, thats about that.

. . . . . .

[29] Cross Examination

[30] By Mr. Goza:

Q. Your testimony on direct examination was that you made a compilation of the total number of voters in the

City of Canton as of January the 12th, 1969? A. Yes, as of about that date.

Q. What was the total figure? A. Could I see those lists that I just made. Total figure as of that date was 2,794 black, 2,052 white.

Q. Make a total of 4846, do you agree with that figure? A. Yes. Yes sir.

Q. What was the total number of voters regardless of race residing within ward four as of that date? A. In ward four?

Q. Regardless of race the total number of voters? A. I come up with the figure of 1585.

Q. What is the total number of voters residing in ward four regardless of race as of this date according to your figures? A. As of this date? I don't have figures as of this date. I took these only as of that date and I made an approximation at to what had occurred since then.

By Judge Coleman:

When were these extension ordinances adopted or when was the last one adopted, let me put it that way?

By Mr. Goza:

[31] Your Honor, it was adopted, I don't know the exact date it was adopted. It became effective on August the 15th, 1968.

By Judge Coleman:

That would really be the test on—

By Mr. Goza:

(Interrupting) The effective date, yessir.

By Judge Coleman:

(Continuing) the voting strength is now. I just mention that to you, let us move on if you will, its now how many people you have at present, its what the condition was at the very time the extension was made so far as voting

rights act is concerned we are now passing on the validity of the extension, not conditions as of the present time.

• • • • • • • • • • •

By Mr. Goza:

Q. Do you know how many registered voters regardless of [32] race there are in ward four at this time? A. No, I do not.

Q. Do you know how many registered voters regardless of race there are in wards three, two or one at this time? A. At this time?

Q. Or at any time subsequent to January the 12th, 69? A. No, I didn't do breakdown by, I just have totals for, approximate totals.

Q. Do you know what the total voter registration regardless of race is in the City of Canton as of this time? A. As of this time I think the figures that I gave beforehand and approximating is 150 additional black voters and approximately 810 white voters I come up with figures of black voters 2,944 and white voters 2,862 uhh which is difference of about 82 votes.

Q. Upon what records, if any, did you base your figure of 150 additional black votes? A. Well, uhh I did in uhh some additional people out to the City Clerk's office and we checked the cards which he had which were not at that time in the poll books or the books for each ward and when we took down the names of all persons and the addresses and we then broke it down on that basis as to uhh number of black and number of white.

Q. And this was the closest approximation you could make? [33] A. As of uhh now these figures were as of about uhh February 4th or 5th. Now there have been additional registered since uhh since that date by a federal registrar black and white.

Q. That's the point I am making. Would you state to the Court what the racial breakdown is of the people registered to vote prior uhh subsequent to February the 3rd, 1969? A. By racial?

Q. By the federal registrar? A. No, I don't have any knowledge as such.

Q. You did not count those? A. No.

• • • • • • • • • • •

Q. Would it be a fair statement to say that black people have registered with the federal registrar since February the 3rd of this year? A. Right. Same would also be true as to white persons.

Q. Would you give me your best judgment as to white people who have registered with the federal registrar and [34] their names, if you know? A. Best judgment as to persons and how many, is that?

Q. How many, that's what I am interested in? A. No, I, I don't really know their names or how many but I do know that a number of them did register because I observed them personally.

Q. So your figure of 150 black votes as of February, additional black voters as of February the 3rd is not correct? A. Yes, it is correct.

Q. Is it correct as of now? A. I'm sorry, I don't understand the question.

Q. You said that as of February the 3rd, 1969, that approximately 150 black people had registered to vote between then and February the 3rd— A. (Interrupting) Between January the 12th—

Q. (Interrupting) And February the 3rd? A. That's right.

Q. All right. Now, how many black people have registered to vote since February the 3rd, 1969? A. Oh, I, I don't have any idea.

Q. But you do admit that there have been some? A. Right as have been some whites.

Q. Have there been more black or more white registered with the federal registrar since February the 3rd, 1969? [35] A. I would say more whites registered with the registrar.

• • • • • • • • • • •

[38] By Mr. Doerfner:

Your Honor, the parties will stipulate that there are now some 78 white houses out there and some 14 black houses in that expansion.

By Judge Cox:

Out where?

By Mr. Doerfner:

In the east expansion, 1966.

• • • • • • • • • • •

[39] By Mr. Doerfner:

Two to a house, there would be 156 white votes and 28 black votes.

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By Mr. Goza:

Your Honor, the further stipulation was, counsel, was that at the time of the expansion, the effective date of the expansion was June the 4th, 1966, which we contend is the date of importance there were 32 white [40] houses and 14 colored houses—

By Mr. Doerfner:

(Interrupting) We stipulate to that.

By Mr. Goza:

(Continuing) and that the number of houses at this time is irrelevant but we are willing to stipulate in the interest of time.

By Mr. Doerfner:

We will stipulate as to the 32 figure too.

• • • • • • • • • • •

By Mr. Doerfner:

The further stipulation is that at the time of the expansion there were 32 white houses with 64 votes and 14 black houses with 28 votes.

. . . . . .

By Mr. Doerfner:

[41] That's right. There have been no new black houses and then according to stipulation 60 new white houses.

By Judge Cox:

All right.

By Mr. Doerfner:

Plaintiffs have no further witnesses and we rest, Your Honor.

By Judge Coleman:

All right. Who will the defense have first?

By Mr. Goza:

Your Honor, at this time, pursuant to the agreement, and subject to the plaintiff's objection as to materiality, it is stipulated that if L. S. Matthews, Mayor of the City of Canton, were called as a witness in this cause he would testify that the expansions were done pursuant to the planned adopted 1962 and referred to in the stipulation, that none of the annexations, that in none of the annexations was any area included or any area excluded for reasons related to race or for the purpose of changing or altering the racial composition of the electorate of the City; that such expansions were done in good faith and for lawful and proper governmental purposes. Of course that's subject to their objection for relevancy.

By Mr. Doerfner:

[42] May it please the Court, we do not stipulate to the truth of those facts. We stipulate only to the fact that

the Mayor would say that if he were called and allowed to testify.

By Judge Cox:

That's what he said.

By Mr. Doerfner:

That's right, and we most assuredly do object to the admissibility of that testimony on the grounds that it is not relevant to this case.

By Judge Coleman:

The objection will be overruled and we will consider that along with all of the other proof.

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[45] **Gus Noble**

called as a witness for and on behalf of defendants, was sworn and testified as follows:

* * * * * * * * * *

[46] Direct Examination

By Mr. Goza:

Q. State your name for the record please? A. Gus Noble.

Q. Where do you live, Mr. Noble? A. 701 Cathy Circle, Canton, Mississippi.

Q. How long have you lived in the City of Canton? A. Approximately 49 years sir.

Q. What official position, if any, do you hold with the democratic party in the City of Canton? A. I'm on the election commission sir.

Q. Did you play any part in the searching for and selection of polling places to be used in the democratic primaries for the municipal elections this year? A. Yes, I did.

Q. And what part did you play? A. The examination of all of the places which we felt like were available and adequate to conduct this election.

Q. Would you state to the Court the reason for changing the polling place in ward one from the unemployment office to the Sacred Heart Parish Center?

[47] By Mr. Doerfner:

Your Honor, I object to this on the grounds its not relevant.

By Judge Coleman:

Overruled.

By Mr. Doerfner:

May I have a continuing objection to this line of testimony without bothering each time?

By Judge Coleman:

You may.

By Mr. Goza:

Q. Mr. Noble, state your reasons very briefly if you will please? A. The unemployment office is a small frame building with the only parking available to the rear of it, the inside facilities or construction of the building in our opinion was not adequate to conduct this election due to the fact we were using voting machines which require approximately six feet in length for each machine. The Catholic Parish, Sacred Heart Parish recreational building was available which was immediately in front of the city hall approximately a block and a half to the east of the old building, adequate parking was available, inside facilities were such that the election could be conducted in a very expedient manner, [48] bathroom facilities were available for the workers, it was close to the city hall as I said right across the street from it which would give access to any questions arising from the election so for these reasons we selected this site sir.

Q. Why did you recommend that the polling place in ward two be changed from the First National Bank to the

City Hall? A. The facilities of First National Bank were not available because of the space required again for the election, the lack of parking facilities. The City Hall has all these facilities and we made the selection for this reason sir.

By Judge Coleman:

Well now the First National Bank big as its ever been wasn't it?

By the Witness:

Yes sir, it is.

By Judge Coleman:

Did they continue to give you, did they deny you permission to use the building?

By the Witness:

Yes sir, they did. One of the reasons was security sir.

By Judge Coleman:

[49] That settles that. You can't use private facilities for public purposes unless you have permission. What is your next one.

By Mr. Goza:

Q. Why did you recommend that the polling place for ward three be changed from the Canton Exchange Bank to the old jail building? A. For the same reasons sir the facilities were denied us.

Have any steps been taken to renovate the jail building for use as a polling place? A. Yes sir, it was prepared for the polling place, being cleaned up and repaired, the necessary electrical work done to accomodate the voting machines was done prior to the anticipated election in early May.

Q. And lastly, why was the recommendation made to change the polling place in ward four from the Court House to the Canton School Administration Building on Yandell Avenue? A. First was the conflict with the Cir-

cuit Court now in session in June and the County Court during May, lack of parking facilities, inadequate space in the court house for the voting machines. We selected the school administration building because it does have parking facilities, the interior arrangement of the building would allow for the use of the voting machines, bath [50] room facilities were available to the workers. This is the reason we selected this site sir.

Q. Mr. Noble, are you familiar with the area annexed to the City of Canton in the year 1965? A. Yes sir, I am.

Q. That area is generally south of the 1960 boundaries is it not? A. Yes, it is.

Q. Did you make an actual count of the houses in that area? A. Of the living units, yes sir.

Q. How many did you? A. 23 sir.

Q. Are you familiar with the area annexed to the City of Canton to the east in the year 1966? A. Yes sir, I am.

Q. Do you know how many residences were in that area on June the 4th, 1966? A. Yes sir, total of 46.

Q. Do you know how many of those houses were occupied by white people and how many were occupied by black people? A. 32 by white families and 14 by colored families.

Q. Did you make a survey of the area annexed to the City of Canton in the year 1968 to the north? A. Yes sir, I did.

[51] Q. And did you determine the number of dwelling units in that area? A. 56 occupied by white families and 4 by colored families.

By Mr. Goza:

I believe that's all we have, Your Honor.

By Judge Coleman:

Anybody make any objection or raise any objection about holding an election in a church or in a church owned facility in violation of separation of church and state?

By the Witness:

No sir, the only objection was raised by the complainants here.

By Judge Coleman:

I suggest to you that elections ought not to be held in churches or church owned facilities regardless of the denomination.

By the Witness:

Yes sir.

By Judge Coleman:

Under the decisions of the courts down through the ages about keeping the churches and the state functions separate.

By the Witness:

I agree with that sir.

By Judge Coleman:

[52] All right sir. You may stand aside, Mr. Noble. Do you have any cross examination?

By Mr. Doerfner:

I have just brief cross examination.

Cross Examination

By Mr. Doerfner:

Q. Mr. Noble, was there a city election in 1968 on a bond issue? A. Yes sir, there was.

Q. And do you know where the polling place for ward three was at that time? A. No sir, I do not. I believe, I may stand corrected on this sir, that it was in the old building.

Q. To refresh your recollection I believe the parties have, the defendants answer admits that part of the complaint which indicates that the 68 ward three elections was in the

Shackelford building? A. Yes sir, that's the old building there.

Q. I see. Is that building now in use? A. No sir, it is vacant.

By Mr. Doerfner:

No further questions.

By Judge Nixon:

Do you know whether anyone was interferred with or prevented from voting at any of the new voting places?

[53] By the Witness:

No sir, they were not interfered with. The place that he is making reference to now was also denied us sir.

By Judge Nixon:

Anyone ever complain they were afraid to go to the new polling places because they weren't where they used to be but they were in a white neighborhood as distinguished from a negro neighborhood or vice versa?

By the Witness:

No sir, Your Honor.

By Judge Nixon:

All right.

By Mr. Doerfner:

Q. Have any of the polling places projected for use in 1969 ever been used before? A. The City Hall has been used sir.

Q. That's number two? A. The rest of them are new.

Q. Including three and four? A. Yes sir, all of them are new sir with the exception of the City Hall.

* * * * * * * * * *

[54] **Van Smith, Jr.**

called as a witness for and on behalf of Defendants, was sworn and testified as follows:

* * * * * * * * * *

Q. What is your name please sir? A. Van Smith, Jr.

Q. Where do you live, Mr. Smith? A. 115 West Sims Street, Canton, Mississippi.

Q. How long have you lived in the City of Canton? A. Approximately 46 years.

Q. Mr. Smith, have you been asked to make a canvass or a survey based on the number of residences in the areas annexed by the City of Canton in 1965, 66 and 68? A. I have.

Q. Have you made such a canvass of the potential voters in each of these areas? A. Yes, sir.

Q. Calling your attention to the south or 1965 expansion, what was your result of your canvass or survey in the regard to the number of potential voters in that area? [55] A. The number of potential voters in that area was 46.

Q. How did you arrive at that figure please sir, very briefly? A. By making a survey of the number of houses in the area and using the factor of two voters per house which would give a total of 46.

Q. Did you make—

By Judge Cox:

You know looks to me like you are going right along with your stipulation. You have already stipulated about what number of houses are in 65, 66 and 68.

By Mr. Goza:

Your Honor, this one will only take just a second and the final question I think will clarify it.

By Judge Cox:

All right.

By Mr. Goza:

Q. Did you make such a survey in the east or 1966 annexed area? A. Yes sir.

Q. Did you make such a survey based upon the existing residences as of June the 4th, 1966? A. I did sir.

Q. And what was the result of the number of potential voters regardless of race in that area? [56] A. The number of potential voters was 96 on January, uhh June the 4th, 1966.

Q. Of that many how many were colored? A. 28.

Q. Did you find any white voters in the south or 1965 annexed area? A. No sir, I did not.

Q. So the figure of 46 is all colored, is that correct? A. That is correct.

Q. How many potential white voters were in the east or 1966 annexed area? A. 64.

Q. Did you make such a survey in the north or 1968 expanded area? A. I did sir.

Q. And what was the total result of your survey in regard to potential voters regardless or race? A. 120 sir.

Q. Of that number how many were colored and how many were white? A. 8 were colored and 112 were white.

Q. Mr. Smith, are you, have you made a survey of the voting records in the City Hall of the City of Canton? A. Yes sir.

Q. Do you know the total number of registered voters in [57] the City of Canton as of August the 15th, 1968? A. May I refer to my notes sir.

Q. If they were made by you sir and as a result of your study. As of August the 15th, 1968 there were 2094 white registereds, 2602 black registereds.

Q. Have you made or computed any figures to show what the potential effect on the racial composition of the electorate of the City would be if all of the potential voters in the north or 1968 annexed area had registered to vote? A. Question again please sir.

Q. If all of the potential voters in the north or annexed area had registered to vote after August 15th, 1968, what would be the total number of voters in the City of Canton based upon the figures you just gave me? A. In the City of Canton the total would be approximately 6,000 sir.

By Judge Coleman:

What would the racial composition be?

By the Witness:

The racial, as of now?

By Mr. Goza:

Q. I was speaking as of August 15th, 1968. A. Oh, August 15th, 1968.

Q. I'm taking into consideration the registration of [58] all potential voters in the north annexed area as of August 15th, 1968, what would be the total registration?

By Judge Coleman:

You said the total vote would be 6,000.

By the Witness:

I'm, that was incorrect sir.

By Mr. Doerfner:

Your Honor, I object to this question on the grounds that its irrelevant because the question asked how many voters would there be if some hypothetical had happened, how many voters would there be now if hypothetical had happened. We have evidence in the record already about how many voters there are and I think that's the better evidence and more relevant evidence.

By Judge Coleman:

Well I think we are entitled to consider this too. Objection overruled.

By Judge Cox:

What did you say was wrong, Mr. Smith?

By the Witness:

I was thinking about another date sir. As of August the 15th, 1968 there were 2094 white votes and if we counted all of the potential there 112 plus that would give a total of 2214. The black vote on August the 15th, [59] 1968 was 2602 and if you add the potential there would be 2610. I think that's the figure you want sir.

. . . . . .

[60] Cross Examination

By Mr. Doerfner:

Q. When did you make these surveys, Mr. Smith? A. Over a continuous period of oh two or three months.

Q. Which two or three months? A. What is that?

Q. Which two or three months? A. Just previous to this time.

Q. In other words in the last two or three months from now? A. Right.

By Judge Nixon:

Do you know whether any inhabitants of or registered voters inside the old city limits prior to the 1965 annexation now live in any of the newly annexed area?

By the Witness:

Yes sir, by personal knowledge of some of the people that I know have moved into the area.

By Judge Nixon:

Approximately how many?

By the Witness:

That would be hard to say sir.

By Judge Nixon:

Or the racial composition of them?

By the Witness:

[61] In which area sir?

By Judge Nixon:

All three areas.

By the Witness:

In all three areas. Uhh have registered or potential?

By Judge Nixon:

No, how many registered voters inside the old city limits prior to the 1965 annexation, that is how many residents of the three annexed areas lived inside the city limits of Canton prior to or before the 1965 annexation and were registered voters and later moved to the new area?

By the Witness:

48 sir.

* * * * * * * * * *

By Judge Nixon:

Do you know the racial composition of the 48?

By the Witness:

Those were all white sir.

* * * * * * * * * *

[62] Q. I show you these two paper sets of sheets and ask you when you drew up those figures? A. When they were actually written?

Q. Yes. A. Within the past two days.

Q. When did you make the survey on which those figures are based? A. Over the past three months.

Q. Was some of that done before May the 9th, 1968, uhh 69? A. Yes.

By Mr. Doerfner:

Your Honor, I would like all those, the two sets in his pocket and the set he's just the sheet he is holding in his hand right now marked for identification and admitted into evidence as exhibits.

By Mr. Goza:

Your Honor, just the sheets that he testified from can be admitted in evidence.

By Judge Coleman:

Why of course, any sheet he has testified from can [63] certainly be admitted into evidence. What he has got in his pocket or what I have got in mine that hasn't been referred to of course can't. Just turn over the sheets you have testified from. You are going to have some kind of judicial search of the man's pockets?

By Mr. Doerfner:

No, Your Honor, I am interested just in the material that he has been using.

By Judge Coleman:

That he has testified from.

* * * * * * * * * *

[64] Q. Mr. Smith, since February the 3rd, 1968 have you examined the voter registration records in the City Hall to determine how many people have been registered since that date? A. Yes sir.

Q. How many did you determine? A. There were 92 sir.

Q. Were these people white or colored? A. They were colored sir.

Q. Were there any white people to your knowledge registered in the City of Canton after February the 3rd of 1969? A. No sir.

* * * * * * * * * *

Exhibit P-1

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4464

Stipulation of Fact

Comes Now, the plaintiffs and defendants, acting by and through their respective attorneys of record, and do hereby stipulate and agree, that the following facts may be introduced into evidence at the trial of this case, but expressly reserve the right to enter an objection thereto for the record, on the grounds of irrelevancy and immateriality:

1. That the City of Canton, Mississippi is a municipal corporation, situated in Madison County, Mississippi and is a political subdivision of the State within the meaning of Section 5 of the Voting Rights Act of 1965.

2. The plaintiffs challenge the validity of the following acts of the City of Canton for failure to comply with Section 5 of said Act:

(a) Three separate annexations of adjacent territory by the City which occurred in 1965, 1966, and 1968, respectively.

(b) The designation of polling places for use in the 1969 municipal primary and general elections different from those used in such elections in May, 1965.

(c) The election of the alderman from each of the four wards by vote of all of qualified electors of the municipality rather than by the vote of the electors of the particular ward involved.

3. None of the above have been submitted to the Attorney General of the United States for approval, and no suit has been filed in the court of appeals for the District of Columbia for a declaratory judgment approving the same.

The defendants do not by this stipulation concede that Section 5 is applicable to the above, and contend that such submission to the Attorney General or declaratory judgment is necessary to the validity thereof.

4. (a) That the population of the City of Canton according to the 1960 Federal Census was 9707.

(b) That the estimated population of the City in May, 1965 was 11,000.

(c) That the estimated population of the City as of June 1, 1969 is 12,500.

(d) That the racial composition of the population was 60% Negro and 40% white and is substantially the same as of June 1, 1969.

5. That in the latter part of 1962 or the early part of 1963, the City of Canton, pursuant to a recommendation of its Planning Board, undertook a comprehensive plan for the future growth and development of the city and the expansion of its corporate boundaries. Basically, this plan provided for the following in the order listed:

(a) The expenditure of approximately $500,000 for the extension of the sewerage collection system and the construction of lagoon type teratment facilities to serve the areas proposed to be annexed.

(b) The extension of the municipal boundaries to the south.

(c) The extension of the municipal boundaries to the east.

(d) The extension of the municipal boundaries to the north.

These extensions were not described by precise boundaries, but rather in general terms in reference to their locations in regard to the 1960 municipal boundaries.

6. That in 1963 the city completed the extension and construction of the sewerage project.

7. That pursuant to said plan the City of Canton subsequently expanded its municipal boundaries:

(a) In 1965, by annexing an area south of the 1960 boundaries along and on either side of U. S. Highway No. 51, there were included in this area a number of commercial establishments and residences. The property owners in this area have paid city taxes for the years 1966, 1967 and 1968 and will pay the same in 1969.

(b) In 1966, by annexing an area east of the 1960 boundaries, along and on either side of Mississippi State Highway #16, the Madison General Hospital, an industry, and several commercial establishments and residences were included. The property owners in this area have paid city taxes for the years 1967 and 1968 and will pay the same in 1969.

(c) In 1968, by annexing an area north of the 1960 boundaries generally along and on either side of U. S. Highway No. 51, several commercial establishments and residences were included. The property owners in this area will pay taxes for the year 1969.

8. That each of such expansions were enacted by separate ordinances adopted by the Mayor and Board of Aldermen of the City of Canton, Mississippi in the years 1965, 1966, and 1968, to become effective upon the approval of the chancery court of Madison County, Mississippi, and after proper publication and notice the same were approved by said *Miss. Code Ann.* (1942 Recompiled) Section 3374-10, et seq., being Chapter 491 of the laws of Mississippi of 1950.

9. That the City of Canton has spent the sum of approximately $750,000.00 for utilities and sewerage exten-

sions and other improvements in the 1966 and 1968 annexed areas and intends to spend an additional sum of approximately $100,000.00 in these and other areas for such improvements.

11. That the map prepared by Covington & Tyner, shows the following:

(a) The 1960 limits within orange lines.

(b) The 1965 annexed area within purple lines.

(c) The 1966 annexed area within red lines.

(d) The 1968 annexed area within green lines.

12. That the City of Canton is now, and was prior to November 1, 1964, divided into four wards. The ward lines as they existed on that date and do now exist are shown in heavy blue on the aforesaid map and are further identified thereon by the numbers 1, 2, 3, and 4.

13. That the polling places designated within the wards for use in the 1969 municipal and primary elections are different from the polling places used in the 1965 municipal and primary elections. That the polling places used in 1965 and those which are designated for use in 1969 are as follows:

Ward No.	1965	1969
I	unemployment office	Sacred Heart Center
II	First National Bank	City Hall
III	Canton Exchange Bank	234 E. Fulton
IV	Madison County Courthouse	School Administration Building

That the polling place selected for use in 1969 as a polling place for Ward III is the building formerly used as the

Madison County Jail but has not been so used in several months and is not now designated as a jail by sign or otherwise.

That the City Hall, designated for use in 1969 as a polling place for Ward II has not previously been used in a municipal general or primary election but was used in a special municipal bond election held on November 5, 1968 and has been used as a polling place for county and state elections.

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Counsel for Plaintiffs

R. L. Goza
Counsel for Defendants